

REGULAR WEEKLY SESSION----ROANOKE CITY COUNCIL

December 15, 2003

2:00 p.m.

The Council of the City of Roanoke met in regular session on Monday, December 15, 2003, at 2:00 p.m., the regular meeting hour, in the City Council Chamber, fourth floor, Noel C. Taylor Municipal Building, 215 Church Avenue, S. W., City of Roanoke, Virginia, with Mayor Ralph K. Smith presiding, pursuant to Chapter 2, Administration, Article II, City Council, Section 2-15, Rules of Procedure, Rule 1, Regular Meetings, Code of the City of Roanoke (1979), as amended, and pursuant to Resolution No. 36414-070703 adopted by the Council on Monday, July 7, 2003.

PRESENT: Council Members Linda F. Wyatt, William D. Bestpitch, M. Rupert Cutler, Alfred T. Dowe, Jr., Beverly T. Fitzpatrick, Jr. (arrived late), C. Nelson Harris, and Mayor Ralph K. Smith-----7.

ABSENT: None-----0.

OFFICERS PRESENT: Darlene L. Burcham, City Manager; William M. Hackworth, City Attorney; Jesse A. Hall, Director of Finance; and Mary F. Parker, City Clerk.

The Invocation was delivered by Elder Sylvan A. Moyer, Pastor, Unlimited Power Apostolic Church.

The Pledge of Allegiance to the Flag of the United States of America was led by Mayor Ralph K. Smith.

PRESENTATIONS AND ACKNOWLEDGMENTS:

CITY TREASURER: Mr. Bestpitch offered the following resolution recognizing the service of the Honorable David C. Anderson, City Treasurer, who will retire from his position on December 31, 2003:

(#36560-121503) A RESOLUTION paying tribute to the Honorable David C. Anderson, City Treasurer, and expressing to him the appreciation of this City and its people for his exemplary public service.

(For full text of Resolution, see Resolution Book No. 68.)

Mr. Bestpitch moved the adoption of Resolution No. 36560-121503. The motion was seconded by Mr. Cutler and adopted by the following vote:

AYES: Council Members Wyatt, Bestpitch, Cutler, Dowe, Harris, and Mayor Smith-----6.

NAYS: None-----0.

(Council Member Fitzpatrick was not in the Council Chamber when the vote was recorded.)

The Mayor presented a ceremonial copy of the above referenced resolution to Mr. Anderson.

CLERK OF COURTS: Mr. Harris offered the following resolution recognizing the service of the Honorable Arthur B. "Bert" Crush, III, Clerk, Roanoke City Circuit Court, who will retire from his position on December 31, 2003:

(#36561-121503) A RESOLUTION paying tribute to the Honorable Arthur B. "Bert" Crush, III, Clerk of Circuit Court for the City of Roanoke, and expressing to him the appreciation of this City and its people for his exemplary public service.

(For full text of Resolution, see Resolution Book No. 68.)

Mr. Harris moved the adoption of Resolution No. 36561-121503. The motion was seconded by Mr. Cutler and adopted by the following vote:

AYES: Council Members Wyatt, Bestpitch, Cutler, Dowe, Harris, and Mayor Smith-----6.

NAYS: None-----0.

(Council Member Fitzpatrick was not in the Council Chamber when the vote was recorded.)

The Mayor presented a ceremonial copy of the above referenced resolution to Mr. Crush.

CONSENT AGENDA

The Mayor advised that all matters listed under the Consent Agenda were considered to be routine by the Members of Council and would be enacted by one motion in the form, or forms, listed on the Consent Agenda, and if discussion was desired, that item would be removed from the Consent Agenda and considered separately. He called specific attention to requests for two closed sessions.

The Mayor requested that Item C-1 (Minutes of the regular meeting of Council on Monday, November 3, 2003, and recessed until Friday, November 14, 2003) be removed from the Consent Agenda for separate discussion.

CITY COUNCIL- COMMITTEES: A communication from Mayor Ralph K. Smith requesting that Council convene in a Closed Meeting to discuss vacancies on certain authorities, boards, commissions and committees appointed by Council, pursuant to Section 2.2-3711 (A)(1), Code of Virginia (1950), as amended, was before the body.

Mr. Cutler moved that Council concur in the request of the Mayor to convene in a Closed Meeting as above described. The motion was seconded by Mr. Harris and adopted by the following vote:

AYES: Council Members Wyatt, Bestpitch, Cutler, Dowe, Harris, and Mayor Smith-----6.

NAYS: None-----0.

(Council Member Fitzpatrick was not in the Council Chamber when the vote was recorded.)

COUNCIL: A report from the City Attorney requesting that Council convene in a Closed Meeting to consult with legal counsel on a matter of probable litigation, pursuant to §2.1-344(A)(7), Code of Virginia (1950), as amended, was before the body.

Mr. Cutler moved that Council concur in the request of the City Attorney to convene in a Closed Meeting as above described. The motion was seconded by Mr. Harris and adopted by the following vote:

AYES: Council Members Wyatt, Bestpitch, Cutler, Dowe, Harris and Mayor Smith-----6.

NAYS: None-----0.

(Council Member Fitzpatrick was not in the Council Chamber when the vote was recorded.)

COMMITTEES-HUMAN DEVELOPMENT COMMITTEE-ROANOKE ARTS COMMISSION-SCHOOLS-ZONING: A report of qualification of the following persons, was before Council.

**Louis O. Brown as a member of the Advisory Board of Human Services, for a term ending November 30, 2007;
Sandra K. Brunk as a member of the Roanoke Arts Commission, for a term ending June 30, 2006;**

Terri R. Jones as a member of the Roanoke Arts Commission, to fill the unexpired term of Michael Brennan (resigned), ending June 30, 2004;

William M. Hackworth as a member of the Virginia Western Community College Board of Directors, to fill the unexpired term of Michael F. Urbanski, resigned, ending June 30, 2007; and

Philip H. Lemon and Joel W. Richert as members of the Board of Zoning Appeals, for terms ending December 31, 2006.

Mr. Cutler moved that the report of qualification be received and filed. The motion was seconded by Mr. Harris and adopted by the following vote:

AYES: Council Members Wyatt, Bestpitch, Cutler, Dowe, Harris, and Mayor Smith-----6.

NAYS: None-----0.

(Council Member Fitzpatrick was not in the Council Chamber when the vote was recorded.)

REGULAR AGENDA

MINUTES: Minutes of the regular meeting of Council held on Monday, November 3, 2003; and recessed until Friday, November 14, 2003, were before the body.

(For full text, see Minutes on file in the City Clerk's Office.)

The Mayor referred to the November 3, 2003 minutes and his oral report as a member of The Hotel Roanoke Conference Center Commission. He requested that page 14, line one, be amended to delete the following:

"Mayor Smith advised that revenue from The Hotel Roanoke Conference Center is down when comparing Roanoke to other venues across the state or the country because corporate expenditures have been reduced;..."

The Mayor requested that the following language be substituted:

"Mayor Smith advised that although business is down, The Hotel Roanoke Conference Center is doing well when compared to other venues across the state or the country because corporate expenditures have been reduced;..."

Mr. Cutler moved that the reading of the minutes be dispensed with and that the minutes be approved as recorded, with the above referenced amendment. The motion was seconded by Mr. Harris and adopted by the following vote:

AYES: Council Members Wyatt, Bestpitch, Cutler, Dowe, Harris, and Mayor Smith-----6.

NAYS: None-----0.

(Council Member Fitzpatrick was not in the Council Chamber when the vote was recorded.)

PUBLIC HEARINGS: NONE.

PETITIONS AND COMMUNICATIONS:

CITY SHERIFF-CITY JAIL-BUDGET: A communication from the Honorable George M. McMillan, Sheriff, advising that during the 2003 Session the Virginia General Assembly, legislation was passed which added Section 53.1-131.3, Payment of costs associated with prisoner keep; the legislation states that "any Sheriff or jail superintendent may establish a program to charge inmates a reasonable fee, not to exceed \$1.00 per day, to defray the costs associated with the

prisoner's keep; the Board shall develop a model plan and adopt regulations for such program, and provide assistance, if requested, to the Sheriff or jail superintendent in the implementation of such program; and such funds shall be retained in the locality where the funds were collected and shall be used for general jail purposes.", was before Council.

It was further advised that he was selected by the Board of Corrections as a member of the committee which was responsible for development of the model plan; in doing so, it was his desire to ensure that funds received were maintained by the locality strictly for jail purposes; whereupon, the Sheriff advised that he would like to implement the program and based upon fiscal year 2002-03, there is a potential to collect \$225,240.00 from the program on an annual basis for the City jail.

The Sheriff stated that it was his intent to use the revenue generated from the program to fund four full-time deputy sheriff positions which are needed within the jail and jail annex, at an annual cost of \$140,104.00, and one-half year cost in fiscal year 2004 is \$70,052.00.

The Sheriff recommended that Council authorize the Director of Finance to establish a revenue estimate in the amount of \$70,052.00 for fiscal year 2004 for the Inmate Fee Program; and that Council authorize the addition of four deputy sheriff positions, beginning January 1, 2004, and continuing from year to year, so long as the Inmate Fee Program is operated by the Sheriff and appropriate funding to the following expenditure accounts:

Regular Salaries	(001-140-3310-1002)	\$59,042.00
VRS Retirement	(001-140-3310-1110)	\$ 6,494.00
FICA	(011-140-3310-1120)	\$ 4,516.00

(The item was sponsored by Vice-Mayor C. Nelson Harris and Council Member Alfred T. Dowe, Jr.)

Mr. Bestpitch offered the following ordinance:

(#36562-121503) AN ORDINANCE appropriating funds for additional deputy sheriff positions and establishing a new fee for the care of prisoners at the Jail, amending and reordaining certain sections of the 2003-2004 General Fund Appropriations, and dispensing with the second reading by title of this ordinance.

(For full text of ordinance, see ordinance Book No. 68.)

Mr. Bestpitch moved the adoption of Ordinance No. 36562-121503. The motion was seconded by Mr. Harris and adopted by the following vote:

AYES: Council Members Wyatt, Bestpitch, Cutler, Dowe, Harris, and Mayor Smith-----6.

NAYS: None-----0.

(Council Member Fitzpatrick was not in the Council Chamber when the vote was recorded.)

Mr. Harris offered the following resolution:

(#36563-121503) A RESOLUTION concurring in the establishment by the Sheriff of an Inmate Fee Program pursuant to §53.1-131.3, Code of Virginia (1950), as amended, and approving four (4) full-time deputy sheriff positions needed within the jail and jail annex, beginning January 1, 2004, and continuing from year to year so long as the Inmate Fee Program is operated by the Sheriff.

(For full text of resolution, see Resolution Book No. 68.)

Mr. Harris moved the adoption of Resolution No. 36563-121503. The motion was seconded by Mr. Dowe and adopted by the following vote:

AYES: Council Members Wyatt, Bestpitch, Cutler, Dowe, Harris, and Mayor Smith-----6.

NAYS: None-----0.

(Council Member Fitzpatrick was not in the Council Chamber when the vote was recorded.)

ARTS COUNCIL OF ROANOKE VALLEY: Gregg Lewis, Co-Chair, Downtown- This is Living Tour, reported on the success of the event which was held in October 2003. He stated that the Arts Council sold more than 1,500 tickets for the tour, which provided an opportunity for the City to showcase certain living spaces in downtown Roanoke and what it might be like to be resident of the downtown area. He advised that downtown businesses reported an increase in receipts based on additional foot traffic, but more importantly was the benefit to and exposure of the concept of downtown living, and that a 24 hour downtown Roanoke will point the City of Roanoke in a new and increasingly prosperous direction as a city. He expressed appreciation for the City's support of the event and the desire of the Arts Council to participate in similar types of events in the future.

Robert Fetzer, Co-Chair, Downtown Living Tour, referred to the enthusiasm surrounding the event, and called attention to discussions in regard to expanding the affair in future years. He stated that the City's support was instrumental in the success of the event, the goal of which was to encourage more people to live, work and play in downtown Roanoke.

(The item was supported by the City Manager.)

COMMITTEES-MENTAL HEALTH SERVICES: Sheri Bernath, representing the Board of Directors, Blue Ridge Behavioral Healthcare, presented the annual report of the organization for the year 2003.

She advised that in fiscal year 2003, Blue Ridge Behavioral Healthcare staff delivered 327,183 units of various services to 12,716 residents, at a cost of \$11,486,332.00 to Blue Ridge to provide the services; and the City's local tax contribution to the agency's operations was \$409,428.00, which means that Roanoke residents received \$28.05 worth of services for each tax dollar allocated to their community services board.

Ms. Bernath highlighted the following services:

- Prevention Services operated after-school clubs at six neighborhood sites, provided conflict mediation training for students and faculty of all six middle schools, and provided student support groups at six schools.
- Project LINK served 76 women with a substance use disorder who were pregnant or parenting young children, and provided case management to 48 of their children, and an additional 22 women received education, referral and follow-up services after the birth of their child.
- 133 City residents were detoxified and stabilized at the Shenandoah Recovery Center under a Temporary Detaining Order, eliminating psychiatric hospitalization for these dually diagnosed clients.
- Three Roanoke City residents have participated in Hegira House's Transitional Therapeutic community contract with the Department of Corrections. These residents completed a penitentiary sentence that included substance abuse treatment and were transferred to Hegira to complete their sentence and transition back into the community as productive citizens.

- The Children's Day Treatment Program continued to provide services on-site at four locations: Highland Park, Lincoln Terrace and RAMS Elementary Schools and Addison Middle School. In total, 77 children received services to help maintain them in the public school system.
- Intensive In-home Services were provided to 46 children. This service is for facilities that have children at-risk for out-of-home placement such as foster care, acute hospitalization, residential treatment, and detention.
- Case Managers worked with 409 Roanoke City consumers who have mental retardation and 1,009 individuals with a serious mental illness, providing a total of 38,941 hours of service through Adult Resource Management components.

Ms. Bernath called attention to the Governor's plans to reconfigure the public system of care for the mentally disabled; during the past year, Blue Ridge representatives have worked with senior staff in the Department of Mental Health, Mental Retardation and Substance Abuse Services in Richmond in a restructuring process; at the local level, meetings have been held with senior managers from Catawba Hospital, Carilion Health System, and the Lewis-Gale Medical Center, and it is hoped that these health care partners, working with the Mental Health Association, the Alliance for the Mentally Ill and the Roanoke Valley Alliance for Children, will, in the near future, bring about long needed and positive changes in the system of care, locally and across the Commonwealth of Virginia.

She advised that Blue Ridge is experiencing an increased demand for services while, at the same time, trying to manage reductions in funding and when the organization's local funding request for fiscal year 2005 is submitted, it will be with the recognition that Virginia's budget crisis has had long-lasting effects, therefore, it is hoped that the City of Roanoke will continue to support the organization, financially, to the best of its ability.

Ms. Bernath called attention to progress in regard to renovation of the Burrell Center, the importance of respecting the history of the structure, and preserving its architectural integrity, while providing renewed vigor for many years to come; therefore, after working with preservation consultants, the Burrell Center has been placed on both the Virginia and the National Registers of Historic Places; and the transition from multiple sites to a single location where a variety of service needs can be met for many consumers will occur in approximately February, 2004. (The item was sponsored by the City Manager.)

Ms. Evelyn D. Bethel, 35 Patton Avenue, N. E., inquired about the type of services that will be offered to residents of the City of Roanoke at the Burrell Center, and will services be minimized based upon the extension of service to all parts of the Roanoke Valley, since the historic Burrell Hospital will be used as a nursing home. She stated that it is hoped that there will be no reduction in the type and quality of service to be afforded to the citizens of Roanoke.

Council Member Fitzpatrick entered the meeting.

CONVENTION AND VISITORS BUREAU-CELEBRATIONS: David L. Kjolhede, Executive Director, Roanoke Valley Convention and Visitors Bureau, presented the annual report of the RVCVB for 2003.

He advised that the RVCVB budget for fiscal year 2002-03 was \$1.2 million; the Bureau's stakeholders and partners include the Cities of Roanoke and Salem, the Counties of Roanoke, Franklin and Craig, the Virginia Tourism Corporation, and over 175 private sector members from the hospitality industry in the Roanoke Valley and beyond. He further advised that utilizing conversion study results and conservative spending figures, the Bureau's budget generated the following revenues for the Roanoke Valley and partner organizations:

Leisure Travelers:	\$ 34,253,000.00
Conventions Hosted:	33,726,000.00
Sports Marketing	8,622,000.00
Motorcoach:	1,179,000.00
Golf:	<u>152,000.00</u>
Total Direct Spending:	77,932,000.00

Mr. Kjolhede pointed out that the \$77 million are a direct result of Bureau driven marketing programs and represent approximately 20 per cent of the \$369 million spent annually in the Roanoke Valley by visitors, conventioners, sports enthusiasts and group travelers.

In conclusion, Mr. Kjolhede advised that conventioners, tour groups, sports participants and leisure travelers all contribute to the economic well-being of the Roanoke Valley; the Virginia Tourism Corporation's most recent figures indicate that tourists spend over \$369 million per year in the Roanoke Valley, making tourism a \$1 million per day industry; outside forces such as economic uncertainty, homeland security and the "shake-out" in the travel industry will continue to impact tourism nationwide, however, the Roanoke Valley is well positioned as an affordable, drivable, enticing destination for many groups and travelers; and the Bureau has done a good job in identifying these market segments and utilizing the dollars invested by public and private partners to promote the area. He further advised that although the marketplace grows increasingly competitive and funding is a growing

challenge, the Bureau will continue to develop innovative, cost effective programs to remain viable in the marketplace; and the Roanoke Valley possesses a great product mix and when this is combined with effective marketing, the tourism industry will continue to expand.

(The item was sponsored by the City Manager.)

Question was raised as to how the Roanoke Valley could benefit from Virginia Tech's inclusion in the ACC and what, if any, steps have been taken to position the City of Roanoke to take advantage of the opportunity; whereupon, Mr. Kjolhede advised that representatives of the Convention and Visitors Bureau recently accompanied officials from the City of Salem to bid on the ACC tournament for 2004-05; the RVCVB has initiated marketing efforts in the Carolinas on a limited basis, although efforts will be increased in the future and staff continues to look at opportunities to partner with others.

In view of the increased investment in the RVCVB by the City of Roanoke in the last two years, Council Member Bestpitch requested information on the results of increased investments.

Council Member Cutler inquired about efforts by the RVCVB with regard to local activities in 2007 to coincide with the Jamestown Festival; whereupon, Mr. Kjolhede advised that since the Jamestown Festival will be a statewide celebration, a number of committees have been established across the State to recommend appropriate activities/projects to commemorate the event and the RVCVB is a member of the committee. He stated that locally, some consumer and motor coach marketing will be slanted toward taking advantage of various activities associated with the event.

Mr. Cutler talked about the potential of working with the native American community in planning activities in the City of Roanoke, in Explore Park, and elsewhere with the Monican Indians and other native American groups, to help tourists understand what was happening in this part of Virginia when Jamestown was being settled; and asked that his suggested be included in upcoming discussions.

Council Member Fitzpatrick commended and expressed appreciation to the staff of the RVCVB. He spoke in support of the incorporation of the Convention and Visitors Bureau in the Roanoke Railway Passenger Station.

As a follow up to Mr. Cutler's remarks, Council Member Bestpitch advised that the City of Roanoke will celebrate its 125th anniversary in 2007, and requested that the City Manager recommend appropriate activities and projects to commemorate the occasion.

REPORTS OF OFFICERS:

CITY MANAGER:

HUMAN DEVELOPMENT-CITY EMPLOYEES: The City Manager introduced Jane Conlin, Director, Human/Social Services, who assumed her position with the City on January 5, 2004.

BRIEFINGS: NONE.

ITEMS RECOMMENDED FOR ACTION:

BUDGET-EMERGENCY SERVICES-FLOOD REDUCTION CONTROL: The City Manager submitted a communication advising that in February 2003, the City Manager declared an emergency to exist in the City of Roanoke as a result of flooding; and Council followed in confirming the declaration and called upon the State and Federal government for assistance on March 3, 2003.

It was further advised that the Federal Emergency Management Agency (FEMA) has approved the City of Roanoke for disaster assistance for costs incurred following the flooding; the total amount of disaster assistance to be provided is \$137,005.00, and FEMA has released \$137,005.00; disaster assistance funding from the Federal Emergency Management Agency and the Virginia Department of Emergency Management must be accepted and funding appropriated; and with the exception of residual expenses associated with contracted services and replacement of equipment at Victory Stadium, reimbursement will cover expenses incurred during fiscal year 2002-03.

The City Manager recommended that she be authorized to execute, on behalf of the City of Roanoke, any documentation required in connection with obtaining and accepting the above allocation, in the amount indicated and to furnish such additional information and to take such additional action as may be needed to implement and administer such funds and agreements, said documents to be approved as to form by the City Attorney.

The City Manager further recommended establishment of a revenue estimate of \$113,552.00 in the General Fund and \$23,453.00 in the Civic Facilities Fund, and appropriation of \$137,005.00 to the following expenditure accounts:

<u>Department</u>	<u>Account</u>	<u>Dollar Amount</u>
Contingency-General Fund	001-300-9410-2199	\$ 105,776.00
Parks	001-620-4340-3011	7,776.00
Civic Facilities Fund- Victory Stadium	005-550-7410-2010	23,453.00

Mr. Cutler offered the following budget ordinance:

(#36564-121503) AN ORDINANCE appropriating funds to cover costs incurred as a result of flood damages and establishing a revenue estimate for federal reimbursements, amending and reordaining certain sections of the 2003-2004 General and Civic Facilities Funds Appropriations, and dispensing with the second reading by title of this ordinance.

(For full text of Ordinance, see Ordinance Book No. 68.)

Mr. Cutler moved the adoption of Ordinance No. 36564-121503. The motion was seconded by Mr. Dowe and adopted by the following vote:

AYES: Council Members Wyatt, Bestpitch, Cutler, Dowe, Fitzpatrick, Harris and Mayor Smith-----7.

NAYS: None-----0.

Mr. Dowe offered the following resolution:

(#36565-121503) A RESOLUTION authorizing the acceptance of a grant of funds from the Federal Emergency Management Agency (FEMA) and the Virginia Department of Emergency Management, in connection with the flood emergency of February, 2003; and authorizing execution of any required documentation on behalf of the City.

(For full text of resolution, see Resolution Book No. 68.)

Mr. Dowe moved the adoption of Resolution No. 36565-121503. The motion was seconded by Mr. Cutler and adopted by the following vote:

AYES: Council Members Wyatt, Bestpitch, Cutler, Dowe, Fitzpatrick, Harris, and Mayor Smith-----7.

NAYS: None-----0.

INDUSTRIES-ECONOMIC DEVELOPMENT: The City Manager submitted a communication advising that Boxley Materials Company (Boxley) has purchased land in the City of Roanoke on which to build a cement plant; and in order to have access to the property, it is necessary for Boxley to build a road to City and Virginia Department of Transportation (VDOT) standards, at a total cost of \$308,000.00, which road also opens other property in the City for development.

It was further advised that Boxley has agreed to invest \$2.5 million in the land, facility, equipment, and road, plus create nine jobs; the City will appropriate up to, but not to exceed \$154,000.00 to the Industrial Development Authority of the City of Roanoke (IDA), which, in turn, will provide an economic development grant to Boxley Materials Company, upon certain terms and conditions as set forth in a Performance Agreement; the grant will be made after the Boxley Materials Company cement plant has been completed, is operational, and the company has paid all City taxes due in the first year; after that time, the IDA will provide grant funds over a period of five years to January 31, 2009; each grant request can be up to, but not exceed an amount equal to 50 per cent of the amount of the increased real estate taxes paid by Boxley, or others, to the City for such taxes on real property represented by Official Tax Nos. 5220603, 5220607, and 5220608 for the year in question; and the amount of increased real estate taxes means the difference between the amount of \$2,585.77, which is the current amount of real estate taxes for the above referenced official tax numbers and the amount of real estate taxes actually paid by Boxley, or others, in a particular year; and funding for the grant requests will be adopted annually during the budget process, as appropriate, based on activities undertaken as above described.

The City Manager recommended that Council approve terms of the Performance Agreement between the City of Roanoke, the IDA, and Boxley Materials Company, to provide for a grant up to \$154,000.00, as set forth in the Performance Agreement; and that the City Manager be further authorized to execute a Performance Agreement among the City, Boxley Materials Company, and the IDA to and execute such other documents and to take such further action as may be necessary to implement the Performance Agreement, the form of such agreement to be approved by the City Attorney.

Mr. Harris offered the following ordinance:

(#36566-121503) AN ORDINANCE authorizing the proper City officials to execute a Performance Agreement among the City of Roanoke (City), the Industrial Development Authority of the City of Roanoke, Virginia, (IDA), and Boxley Materials Company (Boxley) that provides for certain undertakings by the parties, in connection with a road extension of Blue Ridge Drive located in the Blue Ridge Industrial Park in the City of Roanoke; and dispensing with the second reading by title of this ordinance.

(For full text of ordinance, see Ordinance Book No. 68.)

Mr. Harris moved the adoption of Ordinance No. 36566-121503. The motion was seconded by Mr. Dowe.

Council Member Cutler requested information in regard to environmental impacts related to truck traffic, noise, air pollution, etc., in the performance of Boxley Materials Company.

Ordinance No. 36566-121503 was adopted by the following vote:

AYES: Council Members Wyatt, Bestpitch, Cutler, Dowe, Fitzpatrick, Harris and Mayor Smith-----7.

NAYS: None-----0

CITY PROPERTY-PARKING FACILITIES: The City Manager submitted a communication advising that on July 1, 2002, Council accepted the proposal of Lancor Parking, L.L.C. to provide management and operation services for certain City owned and/or controlled parking facilities; as a part of contract requirements, Lancor was required to provide the City with a performance bond equal to the total management fee for the three year term of the contract, in order to guarantee the company's performance of the terms and conditions of the contract; due to changes in the bond market, Lancor requested that it be permitted to meet the performance bond requirement by providing the City with a bond in the amount of the current year's management fee; the bond would then subsequently be renewed each year over the life of the contract, in an amount equal to the then current year's management fee; Amendment No. 2 (Attachment A to the report) provides for a change to Section 2(c) of the contract to reflect the change to the bond requirement; the alternate bond procedure will provide the City with more than adequate protection, should the City have a need to call on the bond.

The City Manager recommended that she be authorized to execute an Amendment, in a form to be approved by the City Attorney, to the contract between the City of Roanoke and Lancor Parking, L.L.C., dated July 1, 2002, to provide management and operation services for certain City owned and/or controlled parking facilities, substantially similar to Amendment No. 2 (Attachment A) modifying the performance bond requirement of the contract.

Mr. Harris offered the following ordinance:

(#36567-121503) AN ORDINANCE authorizing an Amendment to the Contract for Management and Operation Services between the City of Roanoke and Lancor Parking, L.L.C., dated July 1, 2002, regarding a modification of such Contract; and dispensing with the second reading by title of this ordinance.

(For full text of ordinance, see Ordinance Book No. 68.)

Mr. Harris moved the adoption of Ordinance No. 36567-121503. The motion was seconded by Mr. Dowe and adopted by the following vote:

AYES: Council Members Wyatt, Bestpitch, Cutler, Dowe, Fitzpatrick, Harris, and Mayor Smith-----7.

NAYS: None-----0

CITY CODE-ENTERPRISE ZONE: The City Manager submitted a communication advising that the City of Roanoke has two Enterprise Zone designations; under Division 5A, Article II, Chapter 32, "Taxation," of the City Code, the application deadline for applying for the Enterprise Partial Tax Exemption incentive is December 31, 2003, for both Enterprise Zone One and Enterprise Zone Two; the designation for Enterprise Zone One also expires on December 31, 2003, but the designation for Enterprise Zone Two does not expire until December 31, 2015, therefore, the appropriate sections of Division 5A need to be amended to reflect the changes; and the City of Roanoke must continue to offer incentives for Enterprise Zone Two as previously approved by the Department of Housing and Community Development, or the City risks losing its Enterprise Zone designation.

The City Manager recommended that Council adopt amendments to Division 5A, Article II, Chapter 32, "Taxation" of the City Code (§32-101.5) to extend the date that applications must be filed for Enterprise Zone Two until December 31, 2015; and adopt amendments to Division 5A, Article II, Chapter 32, "Taxation" of the City Code (§32-101.1, §32-101.5) to delete all references to expiring Enterprise Zone One as of January 1, 2004.

Mr. Fitzpatrick offered the following ordinance:

(#36568-121503) AN ORDINANCE amending and reordaining Article II, Real Estate Taxes Generally, Chapter 32, Taxation, of the Code of the City of Roanoke (1979), as amended, by amending §32-101.1, Generally, §32-101.3, Eligibility of commercial or industrial real property, and §32-101.5, Application, of Division 5A, Exemption of Certain Rehabilitated or Renovated Commercial or Industrial Real Property Located in Either Enterprise Zone One or Enterprise Zone Two, for the purpose of eliminating Enterprise Zone One and extending the application time period for Enterprise Zone Two; providing for an effective date; and dispensing with the second reading by title of this ordinance.

(For full text of ordinance, see Ordinance Book No. 68.)

Mr. Fitzpatrick moved the adoption of Ordinance No. 36568-121503. The motion was seconded by Mr. Dowe.

The City Manager advised that the City has applied for redesignation of Enterprise Zone One, however, no response has been received to date, and it is anticipated that the predesignation will require submittal of a legislative change to Council in early January, 2004.

Ordinance No. 36568-121503 was adopted by the following vote:

AYES: Council Members Wyatt, Bestpitch, Cutler, Dowe, Fitzpatrick, Harris and Mayor Smith-----7.

NAYS: None-----0.

EQUIPMENT-TOTAL ACTION AGAINST POVERTY-YOUTH: The City Manager submitted a communication advising that authority for the process of donating City vehicles and equipment is by letter from the City Manager to the Purchasing Division; the Total Action Against Poverty (TAP) Program has requested that one of the City's disposal vehicles be donated to TAP; recently, the TAP Youth Build Program lost the use of a shared Habitat for Humanities vehicle which was used to transport workers and equipment to various job sites; due to budget limitations, TAP is prohibited from purchasing a vehicle; and City staff has identified one of the Fleet Management vehicles slated to be turned in for disposal as a potential donor vehicle, at an estimated residual value of \$1,505.00.

The City Manager recommended that Council authorize donation of the vehicle to the TAP Youth Build Program, in an effort to bring further City development while providing youth with the skills and discipline required to effectively function within the working environment.

Mr. Bestpitch offered the following resolution:

(#36569-121503) A RESOLUTION authorizing the donation of a City-owned vehicle to Total Action Against Poverty in Roanoke Valley, Inc., for use in its TAP Youth Build Program.

(For full text of resolution, see Resolution Book No. 68.)

Mr. Bestpitch moved the adoption of Resolution No. 36569-121503. The motion was seconded by Mr. Cutler.

Council Member Fitzpatrick inquired if a form of release will be executed by the affected parties releasing the City of Roanoke from potential liability; whereupon, the City Manager advised that title to the vehicle will be transferred to the appropriate party.

The City Attorney advised that either insurance or sovereign immunity would apply to the City in regard to any potential liability.

Resolution No. 36569-121503 was adopted by the following vote:

AYES: Council Members Wyatt, Bestpitch, Cutler, Dowe, Fitzpatrick, Harris and Mayor Smith-----7.

NAYS: None-----0.

CITY PROPERTY-INDUSTRIES-PURCHASE/SALE OF PROPERTY-AIRPORT:
The City Manager submitted a communication advising that the sale of 15 acres of land known as Tract F in the Roanoke Centre for Industry and Technology (RCIT) has been completed; proceeds from the sale, in the amount of \$825,000.00, need to be appropriated to the RCIT Infrastructure Extension account in the Capital Projects Fund; the sale of 400 square feet of City-owned property on Airport Road to the Federal Aviation Administration has also been completed; and proceeds from the sale, in the amount of \$42,000.00, need to be appropriated to a new account to be established in the Capital Projects Fund, entitled "Real Estate Acquisition Expense".

The City Manager recommended that Council appropriate funds totalling \$825,000.00 to Account No. 008-052-9632-9003 - RCIT Infrastructure Extension in the Capital Projects Fund; establish a corresponding revenue estimate for funds which have been received from the sale of property at the RCIT; appropriate funding of \$42,000.00 to a new account entitled, "Real Estate Acquisition Expense", in the Capital Projects Fund; and establish a corresponding revenue estimate for funds which have been received from the sale of property on Airport Road.

Mr. Fitzpatrick offered the following budget ordinance:

(#36570-121503) AN ORDINANCE to establish revenue estimates and appropriate funding from the sale of property at RCIT and from the sale of property on Airport Road, amending and reordaining certain sections of the 2003-2004 Capital Projects Fund Appropriations, and dispensing with the second reading by title of this ordinance.

(For full text of ordinance, see Ordinance Book No. 68.)

Mr. Fitzpatrick moved the adoption of Ordinance No. 36570-121503. The motion was seconded by Mr. Dowe and adopted by the following vote:

AYES: Council Members Wyatt, Bestpitch, Cutler, Dowe, Fitzpatrick, Harris and Mayor Smith-----7.

NAYS: None-----0.

BUDGET-WATER RESOURCES-SEWERS AND STORM DRAINS: The City Manager submitted a communication advising that the State Water Control Board, through the Department of Environmental Quality (DEQ), is proposing that the City of Roanoke enter into a Special Order of Consent (Collection System Order) to make improvements to the waste water collection system, which is a continuation of the existing Special Order addressing wet weather effects at the Water Pollution Control Plant by adding requirements to investigate and quantify sources of inflow and infiltration into the collection system.

It was further advised that sewage collection system consent orders are being issued to cities throughout the Commonwealth of Virginia and in other states; costs associated with some of the orders run in the hundreds of millions of dollars; City staff have worked with other utility members of the Virginia Association of Municipal Wastewater Agencies to review existing orders and to structure as reasonable and effective a solution as possible; for example, the City of Roanoke has agreed as part of the renewal of the Wastewater Service Contract with other local jurisdictions to install flow meters in the collection system for billing purposes; these same flow meters can be used to meet requirements of the Collection System Order; and terms of the Collection System Order are still being negotiated, and upon receipt of a final version, Council will be requested to review and to authorize execution of the Order.

It was explained that substantial study is needed to evaluate the condition of the collection system and to develop recommendations for specific repairs, or future construction projects; proposed work will include installation of flow monitors into various strategic points within the collection system, implementation of several pilot projects in order to help focus investigation of inflow and infiltration, and creation of a collection system model.

The City Manager advised that the work has been properly advertised, with proposals having been received from seven engineering firms; four short-listed firms were interviewed including Black & Veatch International Company, Hazen and Sawyer, PC, RJN Group, Inc., and Wiley & Wilson, Inc; the interview selection committee included representatives from the City's Utility Department, as well as Roanoke County and the City of Salem; the request for proposals was structured in a manner so as to allow participation by other local jurisdictions, at their option, in specific projects or tasks; and the specific project described in the report does not involve a shared expense agreement with other participating jurisdictions inasmuch as the work is limited to the collection system components wholly owned by the City of Roanoke; however, it is anticipated that each of the participating jurisdictions will have to enter into a Special Order of Consent and will conduct similar study activities.

It was further advised that the firm of Wiley & Wilson was selected by the interview panel as the most qualified; an acceptable contract has been negotiated for the work in the form of a time and materials agreement, with a note to exceed fee of \$1,120,134.00; other anticipated expenses associated with system modifications needed for the collection system flow meters brings total required funding to \$1,225,000.00; and funds have been budgeted in a capital reserve account which was developed in anticipation of future debt service requirements.

The City Manager recommended that Council transfer \$1,225,000.00 from Reserve for Future Debt Service (Account No. 003-510-3172-3027) to an account to be established by the Director of Finance in the Water Pollution Control Fund entitled, "Collection System Metering and Analysis".

Mr. Harris offered the following budget ordinance:

(#36571-121503) An ORDINANCE appropriating funds for Collection System Metering and Analysis Services, amending and reordaining certain sections of the 2003-2004 Water Pollution Control Fund Appropriations, and dispensing with the second reading by title of this ordinance.

(For full text of ordinance, see Ordinance Book No. 68.)

Mr. Harris moved the adoption of Ordinance No. 36571-121503. The motion was seconded by Mr. Fitzpatrick and adopted by the following vote:

AYES: Council Members Wyatt, Bestpitch, Cutler, Dowe, Fitzpatrick, Harris and Mayor Smith-----7.

NAYS: None-----0.

WATER RESOURCES-SEWERS AND STORM DRAINS-BUDGET: The City Manager submitted a communication advising that the City of Roanoke entered into a contract dated August 2, 1999, providing for removal, transportation, and disposal of biosolids with Robinson Pipe Cleaning Company; the contract was amended three times in accordance with contract provisions, which allow annual extension of the terms and conditions for up to four additional one-year terms, for a total of five years; and this year represents the final year of services which can be authorized by the existing contract through an amendment.

It was further advised that the quality of work by Robinson Pipe Cleaning Company has been satisfactory for the preceding contract year; wet weather of the past year, however, directly impacted the quantity of biosolids that could be land applied (Virginia Department of Health regulations do not permit land application during rain events or on water-saturated lands); total dry tons of biosolids land applied was approximately 3,750 dry tons, which is short by 4,250 dry tons of the 8,000 dry ton minimum required in the contract documents; based upon close monitoring of the activities of Robinson Pipe Cleaning by Utility staff, it is the opinion of staff that the circumstances which caused Robinson Pipe Cleaning to not meet the minimal work requirements of the contract were beyond the company's control; the reduction in removal of biosolids has not impacted the City; the contract contains provisions which allow the City to assess liquidated damages against the contractor, at a cost of \$89.66 per dry ton under the minimum established contract level; and the City's primary concern is the potential cost increase for inflation adjustments, which is permitted under Contract terms, and would bring this year's price to \$90.83 per dry ton.

It was explained that proposed Amendment No. 4 requires Robinson Pipe Cleaning Company to honor the price of \$89.66 per dry ton for the first 4,250 dry tons; the next 3,750 dry tons, and any additional amounts will be at a cost of \$90.83 per dry ton, in accordance with provisions of Amendment No. 4; City staff recommends a Change Order to Amendment No. 3 to reduce the required minimum number of dry tons from 8,000 to 3,750; and funding for the work was established during budget adoption and is available in Account No. 003-510-3150-2010.

The City Manager recommended that she be authorized to execute a Change Order to Amendment No. 3, reducing the required minimum number of dry tons from 8,000 to 3,750; that she be authorized to amend Amendment No. 4 to the contract for an additional one year period, retroactive from October 1, 2003 through September 30, 2004, at a cost of \$89.66 for the first 4,250 dry tons and \$90.83 per dry ton for the remaining 3,750 dry tons and any additional dry tons removed, with a minimum total of 8,000 dry tons and a maximum of 10,000 dry tons of bio-solids removed from the City's Water Pollution Control Plant; and that the City Manager be further authorized to execute such additional documents and to take such additional action as may be needed to implement and to administer the Amendment and Contract, including any further changes deemed appropriate by the City Manager.

Mr. Cutler offered the following ordinance:

(#36572-121503) AN ORDINANCE authorizing the City Manager's issuance of a Change Order to Amendment No. 3 to the City's contract with Robinson Pipe Cleaning Company regarding the removing, transporting, and disposing of digested lagoon biosolids from the City's Water Pollution Control Plan; and dispensing with the second reading by title of this ordinance.

(For full text of ordinance, see Ordinance Book No. 68.)

Mr. Cutler moved the adoption of Ordinance No. 36572-121503. The motion was seconded by Mr. Harris and adopted by the following vote:

AYES: Council Members Wyatt, Bestpitch, Cutler, Dowe, Fitzpatrick, Harris and Mayor Smith-----7.

NAYS: None-----0.

Mr. Fitzpatrick offered the following ordinance:

(#36573-121503) AN ORDINANCE authorizing execution of an amendment extending for an additional term of one year a contract with Robinson Pipe Cleaning Company for removing, transporting and disposing of digested lagooned biosolids from the City's Water Pollution Control Plant; and dispensing with the second reading by title of this ordinance.

(For full text of ordinance, see Ordinance Book No. 68.)

Mr. Fitzpatrick moved the adoption of Ordinance No. 36573-121503. The motion was seconded by Mr. Cutler and adopted by the following vote:

AYES: Council Members Wyatt, Bestpitch, Cutler, Dowe, Fitzpatrick, Harris and Mayor Smith-----7.

NAYS: None-----0.

CITY CODE-POLICE DEPARTMENT-GRANTS: The City Manager submitted a communication advising that during fiscal year 2001-2002, Roanoke City Police Officers arrested 357 individuals for driving under the influence (DUI); during the same time period, there were 183 alcohol-related traffic accidents; and DUI arrests totaled 395 in fiscal year 2002-2003, with 187 alcohol-related traffic crashes, representing an 11 per cent increase in DUI arrests and a two per cent increase in alcohol-related traffic accidents over the previous fiscal year.

It was further advised that the Roanoke City Police Department continues to spend a great deal of time, effort and money in combating drunk driving in an effort to make City streets safer through a variety of special details and checkpoints conducted to decrease the number of drunk drivers on the streets; many of these activities were held with the use of grant money to provide supplemental enforcement to regular on-duty officers; officers distributed literature to educate motorists on the dangers of drunk driving and what to do if a drunk driver is spotted by a citizen; and while these efforts serve to help make Roanoke's streets safer, the problem continues.

It was explained that Section 15.2-1716, Code of Virginia (1950), as amended, allows localities to enact an ordinance to recover reasonable expenses incurred by the locality from persons violating DUI, reckless driving, driving without a license, and other provisions when providing an appropriate emergency response to any accident or incident related to such a violation; in determining "reasonable expenses", a locality may bill a flat fee of \$100.00, or a minute-by-minute accounting of actual costs incurred, not to exceed the aggregate of \$1,000.00; for example, Roanoke County and the City of Virginia Beach have enacted such an ordinance and its Police Departments currently bill convicted DUI offenders \$100.00 to recover costs incurred by the City for the officer's time; the proposed ordinance will serve to enhance the City's efforts to make its streets safer and allow the City to recoup a portion of the cost of public resources expended in response to DUI incidents; Roanoke's General District Court currently provides the Police Department with a post-court docket, which indicates those individuals who are convicted of a DUI offense within the City; using the information provided through the docket, each offender would be billed \$100.00 by Police Department staff for each DUI conviction using the City-wide Billing System; and the billing initiative would be handled by the General District Court at some future date.

It was stated that projected annual revenue is estimated at approximately \$20,000.00; funds recovered through the program would be used by the Police Department to purchase traffic/DUI enforcement equipment and related educational materials to enhance the City's efforts to combat drunk driving.

The City Manager recommended that Council adopt an ordinance amending and reordaining the Code of the City of Roanoke (1979), as amended, by adding a new section under Article 1, "Section 20-17. Reimbursement of expenses incurred in responding to DUI incidents and other traffic incidents", to Chapter 20, Motor Vehicles & Traffic, effective January 1, 2004; that Council adopt a revenue estimate of \$10,000.00 in Account No. 001-110-1234-1412, DUI Offender Fee, for fees anticipated during the second half of fiscal year 2004; and appropriate funding in the same amount to Account No. 001-640-3113-2035, Expendable Equipment.

Mr. Fitzpatrick offered the following budget ordinance:

(#36574-121503) AN ORDINANCE appropriating funds for expendable equipment in the Police Department and establishing a DUI Offender Fee, amending and reordaining certain sections of the 2003-2004 General Fund Appropriations, and dispensing with the second reading by title of this ordinance.

(For full text of ordinance, see Ordinance Book No. 68.)

Mr. Fitzpatrick moved the adoption of Ordinance No. 36574-121503. The motion was seconded by Mr. Dowe.

Council Member Bestpitch inquired about the billing initiative; whereupon, the City Manager advised that billing would be administered by the City's Billings and Collections Department.

Mr. Bestpitch advised that the City Manager's communication states that the collection process may be handled by the General District Court at some future date, which appears to be a more preferable way to collect the fee; whereupon, the City Manager advised that the goal is to establish the fee, determine the volume, and work with the Court to determine the most appropriate way to transfer the collection responsibility. She stated that like many other communities in Virginia that are experiencing an increase in the number of traffic accidents that are related to driving under the influence and leading to more arrests, it is recommended that the fee be initiated as quickly as possible as a deterrent to driving under the influence; and the court system imposing the fine would be in the best interest of all persons, but it is important to ensure that the fine does not inadvertently become associated with other funds which are required to be divided between the State and the locality.

In regard to the General District Court collecting the fee, Mr. Bestpitch suggested that the matter be included on the Council's Pending Items List for further discussion.

Ordinance No. 36574-121503 was adopted by the following vote:

AYES: Council Members Wyatt, Bestpitch, Cutler, Dowe, Fitzpatrick, Harris, and Mayor Smith-----7.

NAYS: None-----0.

Mr. Dowe offered the following ordinance:

(#36575-121503) AN ORDINANCE amending the Code of the City of Roanoke (1979), as amended, by adding a new Section 20-17, Reimbursement of expenses incurred in responding to DUI incidents and other traffic incidents, Article I, In General, to Chapter 20, Motor Vehicles and Traffic; providing for an effective date; and dispensing with the second reading by title of this ordinance.

(For full text of ordinance, see Ordinance Book No. 68.)

Mr. Dowe moved the adoption of Ordinance No. 36575-121503. The motion was seconded by Mr. Fitzpatrick and adopted by the following vote:

AYES: Council Members Wyatt, Bestpitch, Cutler, Dowe, Fitzpatrick, Harris and Mayor Smith-----7.

NAYS: None-----0.

BUDGET-GREENWAY SYSTEM: The City Manager submitted a communication advising that greenways were first proposed for the City of Roanoke by landscape architect John Nolan in the 1907 and the 1928 comprehensive plans that he developed for the City; Mr. Nolan realized that the beneficial aspects of greenways extended far beyond their recreational value; and since that time, the Roanoke Valley community has undertaken an extensive and ambitious greeways development plan.

It was further advised that the Mill Mountain/Prospect Greenway was included in the Roanoke Valley Conceptual Greenway Plan and selected as the region's pilot greenway project in 1995 by the Roanoke Valley Greenways Commission, which is comprised of representatives of all four Roanoke Valley governments; as originally envisioned, the greenway was to connect three of the valley's most visited destinations, linking the Market area with attractions on Mill Mountain, and continuing on to the Blue Ridge Parkway; due to budget constraints and other factors, the scope of the project has been divided into phases; and the present

phase, the Mill Mountain Greenway was completed in September 2003, and allows walkers, runners, and bicyclists to travel from the City Market area, through Elmwood Park, across Elm Avenue and down Williamson Road, across the Walnut Street Bridge, to Piedmont Park overlooking the Roanoke River.

It was explained that due to changes in design and corrections to existing drainage problems, additional work was requested by City staff, which consisted of substituting planted medians for the concrete barrier shown on the plan, adding drainage infrastructure to Williamson Road and Piedmont Street, repaving of the greenway, addition of sidewalk and curb on Laurel Street, and design changes at Hamilton Terrace and Piedmont Park; such work has been completed and a change order is needed in the amount of \$102,559.00; and two change orders were previously executed administratively.

The City Manager advised that approval by Council is required inasmuch as the amount of the change order, combined with the two previous change orders, exceeds 25 per cent of the original contract amount for the project; and funding for Change Order No. 3 is available in unspent balances from completed projects, as follows:

\$ 33,083.00	Barnhart Street Drainage Improvements, Account No. 008-530-9811
30,000.00	RCIT Detention Maintenance Design Fees, Account No. 008-530-9789
14,795.00	Roanoke River Greenway Phase 2, Account No. 008-530-9756
8,887.00	Summit Hills Storm Drain Phase II, Account No. 008-530-9795
4,586.00	Forest Park Drainage Project, Account No. 008-052-9689
4,318.00	Mill Mountain Greenway, Account No. 008-052-9721
3,925.00	Summit Hills Drainage Project Phase I, Account No. 008-052-9695
<u>2,965.00</u>	Ore Branch Channel Design Fees, Account No. 008-530-9788

\$102,559.00

The City Manager recommended that she be authorized to execute Change Order No. 3, in the amount of \$102,559.00, with H. & S. Construction Company for and that Council approve the following transfers:

\$33,083.00 from Barnhart Street Drainage Improvements, Account No. 008-530-811;
\$30,000.00 from RCIT Detention Maintenance Design Fees, Account No. 008-30-9789;
\$14,795.00 from Roanoke River Greenway Phase 2, Account No. 008-530-9756;

**\$8,887.00 from Summit Hills Storm Drain Phase II, Account No. 008-530-9795;
\$4,586.00 from Forest Park Drainage Project, Account No. 008-052-9689;
\$3,925.00 from Summit Hills Drainage Project Phase I, Account No. 008-052-9695; and
\$2,965.00 from Ore Branch Channel Design Fees, Account No. 008-530-9788; to Mill Mountain Greenway, Account No. 008-052-9721.**

Mr. Cutler offered the following budget ordinance:

(#36576-121503) AN ORDINANCE to transfer funding from various projects related to Change Order No. 3 for the Mill Mountain Greenway Project, amending and reordaining certain sections of the 2003-2004 Capital Projects Fund Appropriations, and dispensing with the second reading by title of this ordinance.

(For full text of ordinance, see Ordinance Book No. 68.)

Mr. Cutler moved the adoption of Ordinance No. 36576-121503. The motion was seconded by Mr. Dowe.

Council Member Cutler suggested that a public event be held at the appropriate time in recognition of completion of the Mill Mountain Greenway and that Council Members either walk or bicycle down the Greenway.

Council Member Bestpitch advised that the City Manager's communication states that due to changes in design and corrections to existing drainage problems, additional work was requested by City staff; however, the communication further states that the work has been completed and a change order is needed in the amount of \$102,559.00 to fund the work. He also referred to paragraph one on page 2 of the report which states that, "Council approval is required as the amount of this change order combined with the two prior change orders, exceeds twenty-five per cent (25%) of the original contract amount for the project."

The City Manager clarified that at the point when some of the work was requested, there was not a clear understanding of total costs; this item would not routinely come to the Council unless the 25 per cent rule had been exceeded; two previous change orders were addressed administratively, and the 25 per cent threshold was reached as the additional items and corrections were made, therefore, it became necessary to request action by Council.

Mr. Bestpitch advised that the 25 per cent rule affords the Council the opportunity to review certain costs in advance, not retrospectively. He stated that in this instance, he would vote for the ordinance, but he would hope that the City Manager will refrain from bringing future items to the Council after the fact.

The Mayor inquired as to what measures have been implemented to keep from exceeding the 25 per cent threshold in the future; whereupon, the City Manager advised that certain items came in incrementally, as opposed to a total budget for all items, and it was not until all items were totaled that it was discovered that the 25 per cent threshold had been exceeded. She stated that the procedure has been tightened so that if multiple activities occur, they should be budgeted accordingly before moving forward to ensure that the 25 per cent threshold is not exceeded in the future.

Ordinance No. 36576-121503 was adopted by the following vote:

AYES: Council Members Wyatt, Bestpitch, Cutler, Dowe, Fitzpatrick, Harris, and Mayor Smith-----7.

NAYS: None-----0.

Mr. Dowe offered the following ordinance:

(#36577-121503) AN ORDINANCE authorizing the City Manager's issuance of Change Order No. 3 to the City's contract with H. & S. Construction Company for changes in design and corrections to existing drainage problems in connection with the Mill Mountain Greenway; and dispensing with the second reading by title of this ordinance.

(For full text of ordinance, see Ordinance Book No. 68.)

Mr. Dowe moved the adoption of Ordinance No. 36577-121503. The motion was seconded by Mr. Cutler and adopted by the following vote:

AYES: Council Members Wyatt, Bestpitch, Cutler, Dowe, Fitzpatrick, Harris and Mayor Smith-----7.

NAYS: None-----0.

CABLE TELEVISION: The City Manager submitted a communication in connection with an amendment to update the Roanoke Valley Regional Cable Television Committee (RVRCTC) Agreement to reaffirm continued participation of Roanoke City, Roanoke County, and the Town of Vinton in the agreement; Roanoke County and Vinton adopted revised ordinances and franchise agreements to support their continued participation in RVRCTC shortly after Council adopted similar agreements on October 6, 2003; and the amendment updates the agreement to incorporate the following actions taken by Roanoke County and the Town of Vinton:

On October 6, 2003, Council adopted Ordinance No. 36503-100603, which provided for a revised Cable Television Franchise Ordinance for the City of Roanoke and provided for an effective date of October 31, 2003; on October 7, 2003, the Vinton Town Council adopted Ordinance No. 792, which is substantially similar to the City's ordinance; on October 28, 2003, Roanoke County adopted Ordinance No. 102803-12, which is also substantially similar to the City's ordinances; the three ordinance provided that each jurisdiction affirmed its continued participation in and support of the Roanoke Valley Regional Cable Television Committee (CATV Committee) which was created by agreement dated June 9, 1992, among the three jurisdictions (RVRCTC Agreement); such agreement provides for the Committee to provide for development, administration, and operation of cable television governmental, educational and institutional facilities and programming, and referred to prior ordinances adopted by the jurisdictions in 1991.

It was explained that pursuant to ordinances adopted by each of the jurisdictions in October 2003, each locality has entered into a Cable Television Franchise Agreement between the respective jurisdiction and CoxCom, Inc., d/b/a Cox Communications Roanoke as of November 1, 2003; the RVRCTC Agreement needs to be modified to provide references to the current Cable Television Franchise Ordinances and the Cable Television Franchise Agreements entered into by each of the jurisdictions; and accordingly, Amendment No. 1 to such Agreement has been drafted and reviewed by legal counsel for the three jurisdictions and requires approval by Council.

The City Manager recommended that Council approve the terms of Amendment No. 1 to the RVRCTC Agreement and authorize the City Manager to execute the Amendment, in a form to be approved by the City Attorney; and that the City Manager be authorized to take such further action and to execute such additional documents as may be necessary to implement and to administer Amendment No. 1 to the RVRCTC Agreement and the Agreement itself.

Mr. Dove offered the following ordinance:

(#36578-121503) AN ORDINANCE approving and authorizing execution of Amendment No. 1 to the Roanoke Valley Regional Cable Television Committee Agreement among the City of Roanoke, the County of Roanoke and the Town of Vinton; and dispensing with the second reading by title of this ordinance.

(For full text of ordinance, see Ordinance Book No. 68.)

Mr. Dowe moved the adoption of Ordinance No. 36578-121503. The motion was seconded by Mr. Harris and adopted by the following vote:

AYES: Council Members Wyatt, Bestpitch, Cutler, Dowe, Fitzpatrick, Harris and Mayor Smith-----7.

NAYS: None-----0.

DIRECTOR OF FINANCE:

DIRECTOR OF FINANCE-BUDGET-CAPITAL MAINTENANCE AND EQUIPMENT REPLACEMENT PROGRAM: The Director of Finance submitted a written report advising that in mid-September, Council was presented with the unaudited total of funds available for Capital Maintenance and Equipment Replacement (CMERP); due to the short period of time in which the annual closing process is completed, the amounts were partially based on estimates; calculations used to achieve the estimates were based on a 60-day period of availability for revenues received after year-end and similarly, expenditures are subject to accrual to the extent that they relate to goods or services received prior to June 30th.

It was further advised that during the course of annual financial statement preparation, actual revenues and expenditures were identified, and some adjustments were made to incorporate actual data into the fiscal year 2003 financial statements, which resulted in an adjustment to CMERP for both the General Fund and the School Fund; adjustments in General Fund CMERP stemmed from changes in general local tax revenues and an expenditure accrual which generated a net increase of \$175,401.00; of this amount, \$101,069.00 was shared with the School Board based on the revenue sharing formula; adjustments in the School Fund stemmed from changes in school sales tax revenues which generated an increase of \$103,485.00; total School CMERP increased \$204,554.00, while City-retained CMERP increased \$74,332.00; and a comparison of unaudited and audited CMERP is as follows:

	<u>Unaudited</u>	<u>Audited</u>	<u>Increase</u>
General Fund - City Portion	\$2,480,774.00	\$2,555,106.00	\$ 74,332.00
General Fund - School Portion	<u>529,557.00</u>	<u>630,626.00</u>	<u>101,069.00</u>
Total General Fund	\$3,010,331.00	\$3,185,732.00	\$ 175,401.00
School Fund	\$2,000,149.00	\$2,103,634.00	\$ 103,485.00

There being no questions or discussion, without objection by Council, the Mayor advised that the report would be received and filed.

AUDITS-PENSIONS-DIRECTOR OF FINANCE: The Director of Finance submitted Financial Reports of the City of Roanoke and the City of Roanoke Pension Plan for the year ended on June 30, 2003.

There being no questions or discussion, without objection by Council, the Mayor advised that the Financial Reports would be received and filed.

REPORTS OF COMMITTEES: NONE.

UNFINISHED BUSINESS: NONE.

INTRODUCTION AND CONSIDERATION OF ORDINANCES AND RESOLUTIONS: NONE.

MOTIONS AND MISCELLANEOUS BUSINESS:

INQUIRIES AND/OR COMMENTS BY THE MAYOR, VICE-MAYOR AND MEMBERS OF CITY COUNCIL:

CELEBRATIONS-DOWNTOWN ROANOKE, INC.: Council Member Dowe commended all persons responsible for the successful Dickens of a Christmas which was held on December 5 - 19, 2003, on the City Market in downtown Roanoke.

CITY COUNCIL-NATIONAL LEAGUE OF CITIES: Having attended the National League of Cities Congressional City Congress in Nashville, Tennessee, on December 10 - 13, 2003, and talking with officials from other localities around the country, with regard to various programs, Council Member Wyatt commended the City of Roanoke on adopting and administrating programs that other localities are just beginning to think about.

ACTS OF ACKNOWLEDGEMENT-NATIONAL LEAGUE OF CITIES-CITY INFORMATION SYSTEM-WATER RESOURCES: Council Member Cutler advised that the City of Roanoke was the recipient of two awards at the National League of Cities Annual Conference; i.e.:

- Center for Digital Government and Micro Soft Award for the best web site and e-government program of any city the size of Roanoke in the United States; and
- The James C. Howland Award for Urban Enrichment for the City's water conservation/education program, "Every Drop Counts."

Mr. Cutler commended City staff for their work which enabled the City of Roanoke to receive these awards.

NATIONAL LEAGUE OF CITIES: The Mayor advised that during conference sessions and group discussions, issues of concern to the majority of officials attending the National League of Cities Annual Conference appeared to be around funding and the role of local government.

AIRPORT-CELEBRATIONS: The Mayor called attention to the 100th anniversary of the Wright Brothers' First Flight (December 17, 1903 - December 17, 2003) at Kitty Hawk, North Carolina; whereupon, in honor of the event, he presented each Member of Council with a Certificate establishing the "Roanoke Air Force".

BUDGET: Vice-Mayor Harris advised that the City of Lynchburg has adopted a two-year budget cycle; whereupon, he requested that the City Manager contact officials of the City of Lynchburg to obtain information on the implementation process and report to Council accordingly.

HEARING OF CITIZENS UPON PUBLIC MATTERS:

The Mayor advised that Council sets this time as a priority for citizens to be heard, and matters requiring referral to the City Manager will be referred immediately for any necessary and appropriate response, recommendation or report to Council.

SCHOOLS-ARMORY/STADIUM-COMPLAINTS: Mr. Chris Craft, 1501 East Gate Avenue, N. E., called attention to the need for a closer working relationship between Council and the School Board; and the need to make changes for the good of the school system through Council's appointment of an individual to fill the unexpired term of Melinda J. Payne, resigned.

He asked that Council seriously consider its action in regard to the proposed new stadium/amphitheater at Orange Avenue and Williamson Road in view of toxic waste materials that have been uncovered during excavation and bids that exceeded the City's estimate for the project. He stated that Victory Stadium can and will be used if the facility is marketed properly by the City.

ARMORY/STADIUM: Mr. Jim Fields, 17 Ridge Crest Road, Hardy, Virginia, spoke in support of marketing and promoting Victory Stadium for college football games such as Virginia Tech and the Citadel, in addition to local high school football games. He also spoke in support of naming Victory Stadium in honor of former Mayor Noel C. Taylor and/or the late Dr. Martin Luther King, Jr.

ARMORY/STADIUM: Ms. Evelyn D. Bethel, 35 Patton Avenue, N. E., spoke with regard to the topic of building character as set forth in a proclamation issued by the Mayor, which emphasized the characteristics of responsibility, respect, caring, fairness and citizenship. She advised that for months, citizens have been seeking information on the total cost of the proposed stadium/amphitheater complex; certain features have been removed from the proposal and some citizens view such action as a means to separate the cost so that the base cost of \$18 million will not be exceeded. She referred to a Letter to the Editor which appeared in a recent edition of *The Roanoke Times* suggesting that the money would be better spent on a new or upgraded library in downtown Roanoke, or to pay for school supplies that teachers furnish out of their own personal money because there are insufficient funds in the school budget. She advised that the City of Roanoke and surrounding localities are losing jobs at an alarming rate, and money that could be better spent to encourage economic development will instead go to the construction of a stadium/amphitheater complex that will cost more tax dollars.

CITY MANAGER COMMENTS:

CITY MANAGER-BUSES: The City Manager advised that at its meeting on Tuesday, December 9, 2003, the Council of the Town of Blacksburg unanimously voted to support the bus shuttle system between the City of Roanoke and the Town of Blacksburg, which service should be operational by late Spring of 2004.

CITY MANAGER-CITY EMPLOYEES-SNOW REMOVAL: The City Manager commended City staff for their dedication to clearing streets and parking lots of public facilities during two recent snow events, both of which occurred during times of special events in the City of Roanoke.

CITY MANAGER-SNOW REMOVAL: The City Manager encouraged citizens to clear snow from the sidewalk in front of their residence following snow events.

CITY MANAGER-CITY EMPLOYEES: On behalf of City staff, the City Manager expressed appreciation to Council for approval of two additional holidays (December 26, 2003 and January 2, 2004) for City employees. She advised that staff appreciates the support of Council during the past year; January 1, 2004, will bring additional opportunities and challenges to the City, and staff is ready and willing to take Council's leadership and move the City forward to even greater heights.

At 4:00 p.m., the Mayor declared the meeting in recess for two Closed Sessions.

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At 4:00 p.m., the Mayor declared the meeting in recess for two Closed Sessions.

At 7:00 p.m., on Monday, December 15, 2003, the Council meeting reconvened in the City Council Chamber, fourth floor, Noel C. Taylor Municipal Building, 215 Church Avenue, S. W., City of Roanoke, Virginia, with Mayor Ralph K. Smith presiding.

PRESENT: Council Members Linda F. Wyatt, William D. Bestpitch, M. Rupert Cutler, Alfred T. Dowe, Jr., Beverly T. Fitzpatrick, Jr., and Mayor Ralph K. Smith-----6.

ABSENT: Vice-Mayor C. Nelson Harris-----1.

OFFICERS PRESENT: Darlene L. Burcham, City Manager; William M. Hackworth, City Attorney; Jesse A. Hall, Director of Finance; and Mary F. Parker, City Clerk.

The meeting was opened with prayer by Mayor Smith.

The Pledge of Allegiance to the Flag of the United States of America was led by Mayor Smith.

PUBLIC HEARINGS:

ZONING: The Mayor advised that the first public hearing is a joint public hearing; by Council and the City Planning Commission.

The following City Planning Commission members were present: Gilbert E. Butler, Jr., D. Kent Chrisman, Paula L. Price, Richard A. Rife, Henry Scholz, and Fredrick M. Williams, and Chairman Robert B. Manetta-----7.

Pursuant to Ordinance No. 25523 adopted by the Council on Monday, April 6, 1981, the City Clerk and the Secretary to the City Planning Commission having advertised a joint public hearing for Monday December 15, 2003, at 7:00 p.m., or as soon thereafter as the matter may be heard by the City Planning Commission and the Council, on a proposed amendment to the Code of the City of Roanoke (1979), as amended, §36.1-25, Definitions, and §36.1-207, Special exception uses, to permit the establishment of outpatient mental health and substance abuse clinics as a special exception use only in the C-2, General Commercial District, of the City of Roanoke, the matter was before the two bodies.

Legal advertisement of the joint public hearing was published in *The Roanoke Times* on Friday, November 28, 2003 and Friday, December 5, 2003; and in *The Roanoke Tribune* on Thursday, December 4, 2003.

Chairman Manetta called on R. Brian Townsend, Agent to the City Planning Commission, to present the report of staff.

Mr. Townsend advised that:

The City's Zoning Ordinance currently provides a single broad definition of a medical clinic, defining such as an establishment which offers medical or health related counseling or treatment including dental, optical and psychiatric treatment, where treatment is offered by more than two licensed professional medical practitioners.

A medical clinic is currently permitted as a use by right in the C-2, General Commercial District, and in the C-3, Central Business District, and is permitted by special exception in the CN, Neighborhood Commercial District, the C-1, Office District, and the LM, Light Manufacturing District.

The current definition of medical clinic covers a wide range of medical specialties and practices and services; while most medical facilities and clinics have similar physical functional and land use characteristics, there are other types of facilities that by nature of their operational and functional needs or characteristics could have potential adverse impacts on adjacent land uses. Certain medical clinics which provide services for drug, alcohol abuse, or treatment of mental illness, have the potential to exhibit operational hours, parking needs, and security measures that are unique unto themselves, and are not shared by other medical clinic facilities as contemplated by the current zoning ordinance definition.

In order to more clearly define and regulate certain types of medical clinics which tend to exhibit these unique functional and operational characteristics, the proposed text amendments establish a newly defined land use as follows: the definition of outpatient mental health and substance abuse clinic is "an establishment which provides outpatient services related to the treatment of mental health disorders, alcohol or other drug or substance abuse disorders, including the dispensing and administering of controlled substances and pharmaceutical products by licensed professional medical practitioners".

The proposed text amendments would permit outpatient mental health and substance abuse clinics in the C-2, General Commercial District, upon the issuance of a special exception by the Board of Zoning Appeals; such regulation would provide a specific process for the review and approval of

these unique types of medical facilities, including general public notice of such proposed use, the notification of abutting property owners, and a public hearing by the Board of Zoning Appeals.

The proposed text amendments allow for retention of the current definition and regulation of other types of medical clinics as originally contemplated by the Zoning Ordinance; strengthen the City's ability to preserve the integrity of future land uses and provide a public forum for consideration of those medical facilities exhibiting unique operational and functional characteristics; provide the City with a process to better address the potential concerns of higher intensity medical facilities; further the recommended actions of Vision 2001-2020 to update the Zoning Ordinance to accommodate changes in land uses, and to protect and improve the quality of life in the City's neighborhoods. The proposed amendments also are consistent with Vision 2001-2020 policies that stress compatibility of uses and protection of the City's neighborhoods.

Mr. Townsend advised that given the evolution of health care delivery systems and the recommendations of the Comprehensive Plan to update the Zoning Ordinance to accommodate changes in land uses, Planning staff recommends to the City Planning Commission that the proposed text amendments be approved.

Chairman Manetta opened the floor for remarks.

Ms. Helen E. Davis, 35 Patton Avenue, N. E., spoke in opposition to the location of the proposed methadone clinic on Hershberger Road, N. W.; whereupon, Mr. Townsend clarified that the City Planning Commission and the Council cannot adopt an amendment that retroactively addresses a site that has already been approved for such a clinic under the current zoning ordinance; therefore, the matter currently before the Planning Commission and Council does not apply to the Hershberger Road location, but would apply to any other clinic that would wish to locate in any other location within the City.

He further clarified that there is no request to rezone the property at 3208 Hershberger Road for the location of a methadone clinic; there is no ability under the existing City Code to provide any mechanism for the City to receive, approve or disapprove a request to establish a clinic on property that is currently zoned as required; Council has no authority to approve or disapprove the request, and Council and the City Planning Commission are attempting to change the City Code so that in the future, if similar situations arise, the City of Roanoke will have the authority to address such requests.

The Mayor advised and Chairman Manetta affirmed that the public hearing is not specifically for the purpose of addressing the location of a methadone clinic on Hersherberger Road and there will be an opportunity for persons to speak to the issue at the end of the Council meeting under Hearing of Citizens. Ms. Janet Crawford, 1731 Kings Mill Drive, Salem, Virginia, President, Mental Health Association of the Roanoke Valley, spoke as an individual with 20 years of experience in the administration of psychiatric and substance abuse outpatient and inpatient facilities. She stated that the Board of Directors of the Mental Health Association of Roanoke Valley believes that the language included in the proposed amendment is rather broad in scope; over 50 per cent of those persons who receive psychiatric medications go to their family practitioners, internists, and cardiologists, etc., rather than to a mental health clinic; and the language of the proposed amendment would affect those practitioners inasmuch as the language refers to anyone dispensing pharmaceutical medication. Therefore, she stated that the proposed amendment will ultimately restrict the availability of services to those who are in need, and create more obstacles than are necessary as professionals begin to establish practices. She advised that although she understands the intent of the proposed amendment, it is requested that Council use caution so as not to restrict access to services and the ability of providers to establish clinics and practices in those areas that need services.

Ms. Evelyn D. Bethel, 35 Patton Avenue, N. E., advised that the proposed amendment provides that those in the C-2, General Commercial District, are, by right, entitled to establish a medical clinic as is currently defined or permitted, however, the current definition proposes that there be approval through a special exception issued by the Board of Zoning Appeals, which would include a public hearing by the Board of Zoning Appeals. She stated that the proposed amendment does not provide guidelines as to requirements that must be met in order to receive a special exception permit, nor does it provide for a definitive use of potential adverse impacts on adjacent land uses, but more importantly, the City's Vision 2001-2020 Comprehensive Plan emphasizes protecting and improving the quality of life in the City's neighborhoods. Therefore, she inquired if any Member of Council would want this type of clinic in their neighborhood. She stated that if there are to be special exceptions, guidelines should be in place specifically setting forth those requirements that must be met in order to issue a special exception. She stated that it is unfortunate that a retroactive provision is not included in the proposed zoning ordinance amendment, no effective date of the proposed amendment is included in

the ordinance, and inasmuch as the proposed methadone clinic on Hershberger Road can locate under the existing ordinance, there is no need to rush the adoption of the proposed zoning ordinance amendment. Therefore, she suggested that more work should be done on the proposed amendment.

Ms. Bethel also advised that the community is concerned about letting their voices be heard before the appropriate officials in Richmond in an effort to prevent the methadone clinic from locating on Hershberger Road, and inquired as to what agency/entity is charged with the responsibility of acting on the application.

Ms. Perneller Wilson, 3045 Willow Road, N. W., spoke in opposition to the proposed methadone clinic on Hershberger Road due to the number of schools and children of all ages who walk to and from school. She expressed pride in Roanoke because both the black community and the white community have come together to speak out on this issue.

Mr. Robert Gravely, 729 Loudon Avenue, N. W., advised that the citizens of Roanoke should have been informed of the proposed methadone clinic on Hershberger Road before a license was issued by the State. He stated that Members of Council and City officials are elected and employed to represent all of the citizens of Roanoke, but citizens are not informed of important decisions until after the fact. He advised that a State representative should have attended the Council meeting to provide answers to questions raised by citizens on the proposed methadone clinic on Hershberger Road.

Ms. Gail Burruss, 2519 Creston Avenue, S. W., Director, Prevention Assessment Counseling Services, Blue Ridge Behavioral Healthcare, expressed concern that the proposed zoning ordinance amendment is so broad in scope that it could include primary care physicians who prescribe medications such as anti depressants, or licensed counselors and social workers who see a wide variety of patients dealing with issues such as grief, adjustment problems, family issues, or not for profit organizations such as Blue Ridge Behavioral Healthcare, or providers of family services that offer counseling, or faith based organizations seeking to provide faith based services to those with mental illness and/or substance use disorders. She stated that if the intent of the proposed amendment is to provide for zoning review of clinics that dispense methadone for opium addicts, she would encourage consideration of limiting the amendment for that purpose. She encouraged City officials to recognize the inherent problems associated with such a broadly worded amendment and not adopt the proposed language. She advised that concerns about the location of methadone clinics in the community are understood and it is hoped that in time the discussion will progress beyond just location, which

is important but not the only issue, to determine how methadone may or may not contribute to a continuum of treatment and rehabilitation for citizens who are addicted to opiates and other drugs.

Mr. Townsend was called upon to respond to questions/concerns raised by various speakers; whereupon, he advised that the proposed ordinance would become effective upon the affirmative vote of five members of the Council; the definition is a two-prong approach: an establishment which provides outpatient service related to the treatment of mental health disorders, alcohol or other drug or substance abuse disorders, which is not a primary care physician's office, or an establishment that provides counseling, or a non profit or religious type of counseling service, such as an Alcoholics Anonymous meeting; the definition is broad enough to address the function of an establishment that has both the treatment/counseling and the dispensing and administering of controlled substances, while not including the primary care physician who may dispense controlled substances related to pain relief/control and not related to substance abuse; and no medications were listed because, either by trade name or by chemical make up, they may not include certain types of medications that would otherwise either supersede or take the place of methadone sometime in the future, but would ultimately have the same effect. He explained that the proposed amendment includes no guidelines, because the zoning ordinance provides the Board of Zoning Appeals with a list of six general guidelines that apply to consideration of special exception uses, therefore, the zoning ordinance provides the Board of Zoning Appeals with guidance as to those things that should be considered when reviewing an application for special exception; also, the Board of Zoning Appeals, under its powers of special exception, can impose conditions, and a time limit for the granting of any special exception from one to five years depending on the context and circumstance of the application and its location. He added that some of the issues that have been addressed by previous speakers are those kinds of things that would be discussed by the Board of Zoning Appeals at a public hearing regarding a special exception; and certain comments made by speakers this evening related to the Hershberger Road location, which, under the current zoning ordinance is a by right situation, are those things that would be discussed if the proposed regulations were in place and a special exception was required for this type of use. He explained that the proposed amendment would not preclude a general practitioner from writing a prescription for which they are legally permitted to write and the patient taking the prescription to their local pharmacy to be filled, inasmuch as the prescription would be for a controlled substance other than mental and substance abuse problems.

Mr. Townsend advised that controlled substances are highly regulated by the Commonwealth of Virginia and the Department of Mental Health and Substance Abuse; and all clinics that dispense and administer controlled substances must be licensed by the Commonwealth of Virginia, as well as a licensing requirement by the Federal Government, Drug Enforcement Agency.

Further discussion ensued following which the City Attorney suggested certain amendments to the proposed ordinance to address various questions and concerns raised by speakers and to tighten up the language. He proposed to insert the word "primarily" after the word "services" in line 2 of the definition and to delete the word "including" and insert the words, "which services include" in lines 3 and 4 of the definition.

Following further discussion, the proposed amendments to the ordinance, as above stated by the City Attorney, were approved by unanimous vote of the City Planning Commission and recommended to Council for approval.

Mr. Fitzpatrick offered the following ordinance, as amended.

(#36579-121503) AN ORDINANCE to amend and reordain §36.1-25, Definitions, of Article II, Construction of Language and Definitions, and §36.1-207, Special exception uses, of Division 3, Commercial District Regulations, of Article III, District Regulations, of Chapter 36.1, Zoning, of the Code of the City of Roanoke (1979), as amended, to permit the establishment of outpatient mental health and substance abuse clinics as a special exception use in only the C-2, General Commercial District, of the City of Roanoke; and dispensing with the second reading by title of this ordinance.

(For full text of ordinance, see Ordinance Book No. 68.)

Mr. Fitzpatrick moved the adoption of Ordinance No. 36579-121503, as amended. The motion was seconded by Mr. Dowe.

Mr. Fitzpatrick advised that if there is a need, over time, to make revisions to the ordinance, he would encourage staff to bring the matter to the Council's attention as soon as possible; the proposed methadone clinic on Hershberger Road is a crisis in northwest Roanoke that Council cannot legally address by the Council's action this evening, however, an additional level of control has been created which provides a means for local input before the State can issue a license for similar types of clinics in the future.

Mr. Dowe encouraged citizens to continue to maintain communication with Council leading to proactive measures to either sustain or prevent situations like this from happening in the future. He expressed appreciation to Elder Shadrack Brown and the congregation of Garden of Prayer Church for their interest in the proposed methadone clinic on Hersherberger Road. He stated that it is also important to remember that there are persons who will be helped by these types of facilities, it is enlightening to see the entire community stand consistently behind the issue, and encouraged citizens of Roanoke to continue to be vigilant with regard to issues that affect their community.

Ms. Wyatt advised that Council has done and will continue to do everything it can to prevent the proposed methadone clinic from opening on Hersherberger Road; however, Council's hands are tied because it must abide by State laws and regulations that govern the facility, and the only action that can prevent the methadone clinic from opening is failure by the State to issue a license. As a retired school teacher, she advised that she has no problem in speaking with State officials, or writing letters and making telephone calls expressing her concern because the proposed facility will be in close proximity to elementary, middle, and high schools as well as local churches. By the same token, she advised that some people need help, but there are more appropriate locations to establish a methadone clinic than the proposed Hersherberger Road location.

Mr. Cutler referred to a communication from the City Attorney on the subject of methadone clinics and inquired if language in the proposed zoning ordinance amendment will make the ordinance as defensible as possible if challenged through the court system.

The City Attorney advised that staff has tried to incorporate language that will not create problems for other professionals in the City of Roanoke; he would not suggest that the ordinance be any more restrictive than that which is proposed, and the ordinance will be saved from legal challenge by virtue of the fact that the use is permitted by special exception in the C-2, General Commercial District, which includes a fair amount of property in the City.

There being no further speakers or questions and comments by Council Members, the Mayor declared the public hearing closed.

Ordinance No. 36579-121503 was adopted by the following vote:

AYES: Council Members Fitzpatrick, Wyatt, Bestpitch, Cutler, Dowe, and Mayor Smith-----6.

NAYS: NONE-----0.

(Vice-Mayor Harris was absent.)

The meeting of the City Planning Commission was adjourned.

SCHOOLS: Inasmuch as there will be a vacancy on the Roanoke City School Board, effective December 31, 2003, created by the resignation of Melinda J. Payne, pursuant to the instructions of Council, the City Clerk having advertised a public hearing for Monday, December 15, 2003, at 7:00 p.m., or as soon thereafter as the matter may be heard in the Council Chamber, to receive the views of citizens regarding appointment of a School Trustee to fill the unexpired term, the matter was before the body.

Applications for the vacancy were received in the City Clerk's Office until 5:00 p.m., on Friday, December 12, 2003. The following persons submitted applications:

**Chris Craft
Harry Davis
Alice Hincker
Alvin L. Nash
Carla Terry**

Legal advertisement of the public hearing was published in *The Roanoke Times* on December 5, 2003; and *The Roanoke Tribune* on Thursday, December 4, 2003.

The Mayor inquired if there were persons present who would like to speak in connection with the public hearing; whereupon, the following persons addressed Council:

Mr. Buck Elwell, 2123 Laburnum Avenue, S. W., spoke in support of the application of Alice Hincker. He advised that the City is presently at a significant crossroads with respect to the oversight that the School Board exercises over the City school administration; therefore, a strong individual to fill Ms. Payne's unexpired term is needed, and that person is Alice Hincker. He stated that Ms. Hincker has been an involved parent in the City school system for a long time, she is

familiar with school issues, she has the energy and the commitment to do the job, she is dedicated to the cause, i.e.: Roanoke City Schools, teachers, students and parents, and she will be a contributing member at the outset. He asked that Ms. Hincker not be viewed as an individual with a single cause - school safety - but that she would bring a wealth of knowledge as an involved parent, an active member of the Parent-Teacher Association, and an involved and concerned citizen who is willing to address issues of importance to the School Board.

Mr. Bud Conklin, 4569 Keagy Road, S. W., Director of Dental Services for Carilion Health Systems, spoke in support of the application of Harry Davis. He advised that he served with Mr. Davis in connection with the Community Based Health Care Coalition, which was made up of community service organizations such as CHIP, TAP, Headstart, Roanoke City School nurses, and a number of lay advisory persons who were charged with the responsibility of solving the dental crisis access problem for underserved children in the community and the region. He stated that through the efforts of Mr. Davis, financial resources were identified which led to the establishment of the pediatric dental clinic at Community Hospital now administering to under served children in Roanoke City and surrounding areas. He further stated that Mr. Davis is committed to children, he has an accounting background with a keen understanding of financial matters, he expects accountability from both individuals and organizations, and he pays close attention to detail in terms of process and outcomes, he is a man of his word, and he is impassioned toward community service to improve and to make a positive difference in the lives of those that he serves. He added that it was reported in a recent newspaper article that Mr. Davis served on the School Board from 1996 to 1998, and during that time he questioned issues of compensation, budget and purchasing practices; however, having served on a number of committees, he can attest to the fact that there is always someone who calls the question, who challenges the status quo, and often these people are labeled as "loose cannons"; however, he has found them not to be a deterrent, but an asset to the organization, oftentimes they are right and if not, they cause the powers that be to examine the process.

Ms. Cynthia Shelor, 370 Walnut Road, City of Salem, and a business owner in the City of Roanoke, spoke on behalf of the application of Harry Davis. She advised that Mr. Davis spends a great deal of time researching issues so that he can be well informed before acting, he is detail oriented, and fully understands budgets and finances; he showed in his past service on the School Board the determination to make the school system as efficient as possible; and he has a passion for the

school system's ability to provide students of the City of Roanoke with a safe environment in the best possible facilities in order to receive the quality of education they deserve.

Ms. Vicky Lionberger, 2508 Laburnum Avenue, S. W., President, Raleigh Court Elementary School PTA, spoke on behalf of the application of Alice Hincker. She publicly expressed appreciation to Ms. Hincker for her work toward the betterment of Roanoke's school system, because many troubling issues facing the Roanoke City School Board would continue to be unknown to the citizens of Roanoke were it not for Ms. Hincker's unselfish giving of her time and research to uncover errors and questionable practices of the school administration. She stated that Ms. Hincker has a Bachelor of Science degree in special education, she has served on countless school PTA boards, she currently serves as Co-Chair of the Patrick Henry PTSA School Safety Committee, and Chair of the Roanoke School Violence Protection Coalition. She expressed admiration for Ms. Hincker, the mother of two children attending Roanoke City Public Schools, who have not been directly affected by school violence, yet she has been willing to involve herself in the issue because she cares for all students and school system staff. She referred to a recent article in *The Roanoke Times* in which the Assistant Superintendent of Schools is quoted as saying that Roanoke City Schools have seen a drop in enrollment by 211 students this year, when in recent years, there was an average of 25 students. She stated that the loss of 211 students translates to approximately \$1 million in lost funds for the school system; the Assistant Superintendent stated that the controversy surrounding the school system may have contributed to the dramatic drop in enrollment; whereupon, she advised that the reality of the situation will come next year when even more dramatic numbers will be seen and there will be an even greater decrease in 2004 enrollment. She added that the Superintendent of Schools has stated that the decline in enrollment has come at the elementary school level, therefore, the violence issues and overall lack of confidence in the school system cannot be the cause for the decline; however, she disagreed with the Superintendent's statement because families who have children in elementary schools are fearful of sending their children to middle and high schools in the City, and they are leaving the City of Roanoke for other Roanoke Valley jurisdictions where there might be a safer school environment. In addition, she stated that there is the controversy of cost to the City of Roanoke in regard to lost future economic development. As Chair of the Roanoke School Violence Protection Coalition, she advised that Ms. Hincker is a team player as well as a leader, she can bring a group of people together to meet common goals, and she is an honorable woman who has the desire, commitment, education and time to serve on the Roanoke City School Board. She stated that her question to the Council is: Will Council stick its head in the sand and appoint another person to the School Board who will be another yes

person to Dr. Harris and the current School Board, or will Council appoint a person who is not afraid of hard work, who will ask the tough questions, who will make the right decisions for the betterment of Roanoke's children and its schools.

Mr. Butch Lewis, 6830 Bowers Road, N. W., spoke in support of the application of Alice Hincker. He advised that the Roanoke City School Board has an obligation to provide a safe, positive learning environment for its young people; each Board member is entrusted with the responsibility to focus on issues that will secure this atmosphere; in choosing a person to fill the vacant School Board position, it is hoped that Council will appoint a person who will stand up and ask the tough questions, a person who will stand up for all those affected by the learning environment -- students, faculty and administration. He commented that Ms. Hincker came into the spotlight as a result of her concerns regarding school safety, she looks at the big picture and her tireless commitment to the safety of Roanoke's schools has been noticed. He stated that if Ms. Hincker is appointed to the School Board, everyone will benefit and the educational future of Roanoke's young people to receive a quality and safe education will be improved.

Mr. Matthew Reams, 1930 Sheffield Road, S. W., spoke on behalf of the application of Alice Hincker. He advised that Ms. Hincker is an advocate for children, teachers and the schools; she has worked tirelessly to uncover the truth, and it was Ms. Hincker who first brought to the public's attention the issue of under reported school violence in Roanoke's schools. He stated that Ms. Hincker has supported those who were wrongly disciplined as a result of coming forth with the truth; she stood behind Officer Butch Lewis when he was reassigned from Patrick Henry High School to a midnight patrol position, a reassignment that many feel was motivated by his willingness to speak out regarding the under reporting of school violence. He added that Ms. Hincker realizes the importance of working with the entire community, and not just a small segment; she co-founded the Roanoke School Violence Protection Coalition in an effort to include all members of the community in finding ways to reduce violence in the schools and she represents a large number of citizens and taxpayers who believe that their voice is not currently being heard by members of the Roanoke City School Board. He advised that Ms. Hincker believes the school system can be better, Roanoke's school system does a great number of things well, but if many students do not feel safe, if many parents fear for the safety of their children, if many teachers fear retribution by standing up for what is right, then all advances that have been made will fall by the wayside.

Ms. Carol Brash, 2259 Westover Avenue, S. W., spoke in support of the application of Carla Terry. She advised that Ms. Terry possesses the qualities that are necessary for a good School Board member; she is committed as a mother and a wife and to her church, she is President of the Addison Middle School PTA, even though she has no children enrolled in the school; she is a professional and deals with people in a professional manner; she cares deeply about Roanoke City and is dedicated to service through her church and other community service organizations; and she treats others with respect while honestly expressing her thoughts, standing up for her beliefs and working toward building consensus which is needed in Roanoke's schools.

Ms. Lynne Victorine, 2221 Ross Lane, S. W., spoke in support of the application of Harry Davis. She advised that Mr. Davis previously served on the School Board, he was a man with an extreme passion and commitment to Roanoke City Public Schools; he has a history of distinguished public service as a veteran of the United States Army and served his country with distinction as a member of the Special Forces in Vietnam. She stated that he served as a member of the School Board from 1996-1998 and currently serves as President of the Roanoke Rescue Mission. She advised that Melinda Payne's departure from the School Board comes at a very critical time; the School Board is in the midst of budget considerations; the School Board deals with a multi-million dollar budget and it seems reasonable that it would be helpful to the current School Board to appoint a person with past experience to the unexpired term, therefore, Mr. Davis would fill that responsibility with a minimum of transitional preparation, and his exceptional knowledge of financial matters would be beneficial in restoring confidence in the School Board's fiduciary stewardship. As a former member of the School Board, she advised that Mr. Davis took his responsibilities seriously and traveled extensively to conferences in order to learn as much as possible about the schools and to bring back ideas to Roanoke's school system; he actively sought input from stakeholders, including parents, teachers and administrators; he was willing to change his position on various issues when presented with information that suggested a better way; and he was ahead of the curve on school safety issues.

Mr. Alex Hincker, 4024 South Lake Drive, S. W., spoke in support of the application of his mother, Alice Hincker. He advised that his mother is a determined person which is a quality that is needed on the School Board; and she has been involved in numerous school projects while continuing to care for her family. He stated that she is willing to make sacrifices in the best interest of the schools and

Roanoke's children; and people sometimes tend to be uncomfortable with her because she frequently asks questions and speaks freely when there are problems. He stated that Alice Hincker would be the best choice when filling the unexpired term of Melinda J. Payne on the School Board.

Ms. Cheryl Evans, 1204 Summit Avenue, S. W., spoke in support of the application of Carla Terry. She called attention to Ms. Terry's leadership capabilities, and her commitment and dedication to her job, to her neighbors and to her neighborhood. She referred to Ms. Terry's passion to become a member of the Roanoke City School Board and advised that she would bring a fresh, unblemished approach to the Board.

Ms. Leslie Harris, 1204 Summit Avenue, S. W., spoke in support of the application of Carla Terry. She advised that Ms. Terry may not be a teacher by profession, but she makes many contributions to the learning environment of students at Addison Middle School. She stated that Ms. Terry appreciates students, faculty and others and she will bring a fresh approach to the School Board to ensure a comfortable learning and teaching environment.

Mr. Jim Fields, 17 Ridge Crest Road, Hardy, Virginia, spoke in support of the application of Chris Craft. He advised that several quality applicants have applied for the position and Council will have a difficult job in making its decision because Roanoke's schools are vital and it is important to appoint the right people to School Board positions.

Ms. Joy Sylvester-Johnson, 402 Bullitt Avenue, S. E., spoke in support of the application of Harry Davis, who currently serves as President of the Roanoke Rescue Mission Board of Directors. She advised that Mr. Davis is a hands on type of leader who sets an example through his volunteer service. She stated that he has a kind heart, he is well intentioned, and he wishes to serve on the School Board because he cares about Roanoke and realizes that what happens in the school system and what happens to the children in the school system has a direct impact on the future of Roanoke.

Ms. Donna McGuirt, 4007 Belford Street, S. W., spoke on behalf of the application of Alice Hincker. She advised that she is the parent of two children currently enrolled in the Roanoke City School System; and along with other parents, she is currently considering whether or not to keep her children in Roanoke City School Systems. She expressed a desire that Roanoke's school system will remain strong and continue to provide a safe environment for children to learn, which is of first and foremost importance. She asked that a person of Ms. Hincker's caliber be

the Raleigh Court Elementary School, she tirelessly works for Roanoke's children, and she is dedicated, highly organized, energetic and dynamic.

Ms. Perneller Chubb-Wilson, 3045 Willow Road, S. W., spoke in support of the application of Harry Davis. She advised that Mr. Davis is a man of integrity, knowledge, skills and the ability to help all races of children. She expressed appreciation to all persons who have offered themselves for appointment and advised that there are some strong candidates who have applied for the position.

There being no further speakers, the Mayor declared the public meeting closed.

ZONING: Pursuant to Ordinance No. 25523 adopted by the Council on Monday, April 6, 1981, the City Clerk having advertised a public hearing for Monday, December 15, 2003, at 7:00 p.m., or as soon thereafter as the matter may be heard, on the request of Edward A. Natt, Attorney, representing Farren and Lynette Webb, that property located at the intersection of Yellow Mountain Road and Melcher Street, S. E., described as Official Tax No. 4300722, be rezoned from CN, Neighborhood Commercial District, to RM-1, Residential Multifamily, Low Density District, subject to certain conditions, the matter was before the body.

Legal advertisement of the public hearing was published in *The Roanoke Times* on Friday, November 28, 2003 and Friday, December 5, 2003.

The City Planning Commission submitted a written report advising that the petitioner proposes to subdivide the subject property and construct three single-family homes on three lots; given the fact that the subject property has no frontage on Garden City Boulevard and that the balance of the block face of Melcher Street on which the subject property has frontage is zoned RM-1, application of the RM-1 zoning classification to the subject property would be consistent with the residential development along Melcher Street and would preclude commercial development along a residentially developed block; and the residential development pattern of Melcher Street includes single-family residential structures ranging in size from 700 square feet to 1600 square feet.

Also, given the subject parcel's lack of frontage on Garden City Boulevard and the residential development pattern of Melcher Street, the subject property creates an appropriate location for single-family residential development; and such zoning designation would further define the CN, Neighborhood Commercial District, along Garden City Boulevard and maintain its focus near the intersection of Yellow Mountain Road.

The City Planning Commission recommended that Council approve the request for rezoning, given the existing residential development pattern of Melcher Street.

Mr. Dowe offered the following ordinance:

(#36580-121503) AN ORDINANCE to amend §36.1-3, Code of the City of Roanoke (1979), as amended, and Sheet No. 430, Sectional 1976 Zone Map, City of Roanoke, to rezone certain property within the City, subject to certain conditions proffered by the applicant; and dispensing with the second reading by title of this ordinance.

(For full text of Ordinance, see Ordinance Book No. 68.)

Mr. Dowe moved the adoption of Ordinance No. 36580-121503. The motion was seconded by Mr. Cutler.

Edward A. Natt, Attorney, representing the petitioner, appeared before Council in support of the request of his clients.

The Mayor inquired if there were persons present who would like to speak in connection with the matter. There being none, he declared the public hearing closed.

There being no discussion or questions by Council Members, Ordinance No. 36580-121503 was adopted by the following vote:

AYES: Council Members Fitzpatrick, Wyatt, Bestpitch, Cutler, Dowe, and Mayor Smith-----6.

NAYS: NONE -----0.

(Vice-Mayor Harris was absent.)

ZONING: Pursuant to Ordinance No. 25523 adopted by the Council on Monday, April 6, 1981, the City Clerk having advertised a public hearing for Monday, December 15, 2003, at 7:00 p.m., or soon thereafter as the matter may be heard, on a request of Super D Holdings, L.L.C., that property located at 414, 416, 418 and 420 Ninth Street, S. E., identified as Official Tax Nos. 4112708 – 4112711, inclusive, be rezoned from C-2, General District, to CN, Neighborhood Commercial District, subject to certain conditions proffered by the petitioner, the matter was before the body.

Legal advertisement of the public hearing was published in *The Roanoke Times* on Friday, November 28, 2003 and Friday, December 5, 2003.

The City Planning Commission submitted a written report recommending that Council approve the request for rezoning, as amended, to include limiting of any drive-through facility to pharmacy use only, limiting use of the property to “neighborhood retail establishments” and clarification of transparency on the front façade of the building; the application of CN, Neighborhood Commercial District, to the four subject properties is consistent with the future land use recommendations of the Belmont-Fallon Neighborhood Plan, and the proffered conditions comply with the village center design principles as set forth in Vision 2001-2020.

The Planning Commission submitted an additional report advising that subsequent to the Planning Commission action on November 30, 2003, a Second Amended Petition was filed on November 26, 2003, which includes one additional proffered use not considered by the Planning Commission during its public hearing.

Background: A Petition to Rezone the four subject properties was filed on September 30, 2003; a First Amended Petition, with conditions, was filed on November 20, 2003; a Second Amended Petition, with conditions, was filed on November 26, 2003; and conditions proffered by the petitioner in the Second Amended Petition are as follows:

The building will face Ninth Street.

There will be no parking between the building and Ninth Street.

At least 20 per cent of the front façade of the building facing Ninth Street shall consist of plate glass.

Use of the property will be limited to neighborhood retail establishments as set forth under paragraph 22 of the Neighborhood Commercial District and restaurants not to exceed 25 seats as set forth under Paragraph 20 of the Neighborhood Commercial District, provided that a drive-thru may be permitted for pharmacy use only.

The Planning Commission advised that the Second Amended Petition includes amended and additional proffered conditions as set forth by the petitioner and recommended for approval by the Planning Commission on November 20, 2003, which include clarification of "transparency" on the front façade of the building, limitation of any drive-through facility to pharmacy use, and limitation of use of the subject properties to "neighborhood retail establishments", as set forth in Section 36.1-164(22) of the Zoning Ordinance, which sets out the permitted uses in the Neighborhood Commercial District.

In order to further define and more clearly reflect the intended use of the subject properties proposed to include a pharmacy, retail sales and a sit-down deli component, the Planning Commission further advised that the Second Amended Petition proffers restaurants, not to exceed 25 seats, in addition to "neighborhood retail" as an additional proffered use of the property; and this specific proffer was not considered by the Planning Commission during its public hearing.

Given that the request to rezone the property from C-2, General Commercial, to CN, Neighborhood Commercial, is a down-zoning and is consistent with the future land use recommendations of the Belmont-Fallon Neighborhood Plan, and given that the

permitted uses of the CN District are consistent with the village center concept of neighborhood-oriented, pedestrian-friendly commercial uses, the request to include restaurants as a proffered use, particularly with a seat limitation, is supportable.

The City Planning Commission recommended that Council approve the request for rezoning as stated in the Second Amended Petition, including a proffer permitting a restaurant not to exceed 25 seats.

Mr. Dowe offered the following ordinance:

(#36581-121503) AN ORDINANCE to amend §36.1-3, Code of the City of Roanoke (1979), as amended, and Sheet No. 411, Sectional 1976 Zone Map, City of Roanoke, to rezone certain property within the City, subject to certain conditions proffered by the applicant; and dispensing with the second reading by title of this ordinance.

(For full text of ordinance, see Ordinance Book No. 68.)

Mr. Dowe moved the adoption of Ordinance No. 36581-121503. The motion was seconded by Mr. Cutler.

Edward A. Natt, Attorney, appeared before Council in support of the request of his client.

The Mayor inquired if there were persons present who would like to speak in connection with the public hearing. There being none, he declared the public hearing closed.

There being no questions or comments by Council Members, Ordinance No. 36581-121503 was adopted by the following vote:

AYES: Council Members Fitzpatrick, Wyatt, Bestpitch, Cutler, and Mayor Smith-----6.

NAYS: None-----0.

(Vice-Mayor Harris was absent.)

ZONING: Pursuant to Ordinance No. 25523 adopted by the Council on Monday, April 6, 1981, the City Clerk having advertised a public hearing for Monday, December 15, 2003, at 7:00 p.m., or as soon thereafter as the matter may be heard, on the request of Norman R. and Marie A. Pratt that certain parcels of land located at the intersection of Stewart Avenue and 9th Street, S. E., identified as Official Tax Nos. 4112016-4112018, inclusive, be rezoned from RM-2, Residential Multi-family, Medium Density District, to C-2, General Commercial District, subject to certain conditions proffered by the petitioner, the matter was before the body.

Legal advertisement of the public hearing was published in *The Roanoke Times* on Friday, November 28, 2003, and Friday, December 5, 2003.

The City Planning Commission submitted a written report advising that the petitioner requests the rezoning of three vacant parcels of land in the 800 block of Stewart Avenue, S. E., for the purpose of permitting an automobile repair establishment on the property.

It was explained that the subject parcels are located in a residential block of Stewart Avenue, including both block faces, and are adjacent to the village center which extends along 9th Street from Tazewell Avenue to Highland Avenue; land uses around the subject parcels include single-family residential, multi-family residential, institutional and commercial uses; and the surrounding land uses and zoning districts include:

- A multi-family dwelling directly adjacent to and to the west of the subject properties along Stewart Avenue zoned RM-2, with the balance of the Stewart Avenue block face also zoned RM-2 and including a vacant lot, one single-family dwelling and two multifamily dwellings;
- A church and associated surface parking lots directly across Stewart Avenue from the subject parcels, zoned RM-2, Residential Multi-family Medium Density District;
- A single-family dwelling and a restaurant across the alley and to the north of the subject parcels, fronting on Tazewell Avenue zoned C-2, General Commercial District;
- A small vacant lot and a single-family home across 9th Street from the subject properties to the east zoned C-2; the single-family home, located on the northeast corner of 9th Street and Stewart Avenue, is oriented towards Stewart Avenue.

It was advised that the request to rezone the subject parcels to C-2, General Commercial District, with conditions, is inconsistent with the following statements and recommended actions of Vision 2001-2020, the City's Comprehensive Plan:

- **Infill development:** Encourage quality infill development that reflects the character of the neighborhood. Infill development consisting of an automobile repair establishment is neither consistent with the existing residential structures along the north side of the 800 block of Stewart Avenue, nor compatible with neighborhood-oriented retail, office, or residential uses encouraged in the village center along 9th Street.
- **Higher-density residential development:** Higher-density residential development should be concentrated within and immediately adjacent to village centers. The future land use map of the Belmont-Fallon Neighborhood Plan, adopted by City Council in January 2003, recommends the future land use for the 800 block of Stewart Avenue as high-density residential development. As one of the two land use components of a village center, the high-density residential use(s) would complement the neighborhood commercial development currently located and encouraged to develop along 9th Street.

The City Planning Commission recommended that Council deny the request for rezoning, advising that given the standards for infill and village center development as set forth in Vision 2001-2020 and the future land use recommendations of the Belmont-Fallon Neighborhood Plan, the Commission cannot support the request for rezoning the subject parcels of land to C-2, General Commercial District, with conditions.

Mr. Dowe offered the following ordinance:

(#36582-121503) AN ORDINANCE to amend §36.1-3, Code of the City of Roanoke (1979), as amended, and Sheet No. 411, Sectional 1976 Zone Map, City of Roanoke, to rezone certain property within the City, subject to certain conditions proffered by the applicant; and dispensing with the second reading by title of this ordinance.

(For full text of ordinance, see Ordinance Book No. 68.)

Mr. Dowe moved the adoption of Ordinance No. 36582-121503. The motion was seconded by Mr. Fitzpatrick.

Maryellen F. Goodlatte, Attorney, representing the petitioners, advised that Norm's Transmissions has operated on Tazewell Avenue for 14 years; it is a small classic "mom and pop" type operation; the business needs to relocate and the petitioners purchased three vacant lots within view of the current location at the corner of 9th Street and Stewart Avenue; it is important to the petitioners to remain in the current neighborhood, therefore, it was a disappointment when the City Planning Commission recommended denial of the application for rezoning. In reaching their decision, she explained that the Planning Commission focused almost exclusively on the question of use, believing that the high density residential; or a village center use is appropriate at this location, although some Planning Commission members believe that this small scale transmission shop is a village center use, and is supported by the Comprehensive Plan; however, the majority of members of the City Planning Commission did not agree. She stated that the southeast neighborhood would like for the business to be located at the proposed location and letters of support and petitions have been forwarded to Council Members from southeast Roanoke residents. She advised that the petitioners have offered to impose conditions on the property in exchange for the rezoning and have agreed to develop the property in accordance with a proposed concept plan there will be no free standing signs, all lights will contain shields to prevent illumination of off site

property, the building will be of metal material and enhanced in a fashion consistent with the design elements encouraged by the City in southeast Roanoke, a transparency will be provided along the front and side facade, with brick along the windows, and the building will be constructed in substantial conformity with the proposed elevations if approved by Council.

The Mayor inquired if there were persons in attendance who would like to speak in connection with the public hearing.

Norman Pratt, 1344 Trah Drive, Goodview, Virginia, petitioner, advised that he worked with City staff in an effort to resolve staff concerns which he hoped would lead to a recommendation for approval by the City Planning Commission by proffering a buffer between his property and the property of adjacent residents, and installation of gravel and grass for wastewater management, but the City Planning Commission still recommended denial of the request for rezoning.

Mr. Earl Elkins, 921 Tazewell Avenue, S. E., spoke in support of the request of the petitioners. He advised that Mr. Pratt has made many contributions to southeast Roanoke residents who could not afford to have their vehicles repaired; he is honest, diligent, hard working and will honor his commitment to the City of Roanoke through the quality of the building that he proposes to construct. He stated that the majority of southeast Roanoke residents are in favor of Mr. Pratt's business remaining in the area.

Mr. Randall Woods, 602 9th Street, S. E., General Manager and Vice-President of Sataline Corporation, which property is currently leased by Replay Video, spoke in support of the new business growth proposed by Mr. Pratt toward helping to rehabilitate and to revitalize the southeast area. He stated that the building proposed by Mr. Pratt will be a good fit with this section of 9th Street which is primarily commercial; and both business representatives and residents of southeast Roanoke support the request for rezoning, because Mr. Pratt has been a good tenant and a good neighbor.

Mr. Richard Nichols, 1620 Kirk Avenue, S. E., representing the Southeast Action Forum, spoke on behalf of the request of Mr. Pratt who has been a member of the southeast community for 13 years. He advised that the petitioner would like to construct a transmission shop on three lots that have been vacant for some time, and the proposed building will blend in and serve as a good addition to the neighborhood. He advised that Mr. Pratt is a businessman who has contributed a great deal to the southeast community, and expansion of his business would bring more revenue to the City, therefore, the Southeast Action Forum encourages Council to approve the request for rezoning.

The Reverend Stephen Harris, 825 Stewart Avenue, S. E., Pastor, Belmont Baptist Church, advised that the Church supports the request of Mr. and Mrs. Pratt which will represent continued economic development in southeast Roanoke.

Mr. Richard Dearing, 5122 Old Virginia Springs Road, S. W., called attention to the Vision 2001-2020 Comprehensive Plan, in which residents dared to dream 20 years into the future of the City of Roanoke and the Roanoke Valley. He referred to progress on Williamson Road, enhancements to Grandin Village, new downtown traffic patterns, a thriving City Market and downtown area, revitalization of the Jamison Avenue, Bullitt Avenue, Ninth Street corridor, with restored buildings throughout the neighborhood, and the continuing dream of nine village centers. Tying in with Vision 2001-2020, he stated that the petitioner proposes to construct an expanded auto service center, which is vital to a well rounded village center. He stated that Mr. Pratt operates a clean and orderly business, he is a well respected businessman, he proposes to make a sizeable investment in the community and his business is an asset to southeast Roanoke. Therefore, he encouraged Council to approve the request for rezoning as submitted by the petitioners.

Mr. Tim McGuire, 804 Tazewell Avenue, S. E., spoke in support of the request for rezoning. He advised that he has operated businesses in southeast Roanoke for approximately 14 years, he owns 12 parcels of land in the vicinity of the proposed rezoning, and he has witnessed many changes in the area. He commended Mr. and Mrs. Pratt on the type of investment they plan to make in the southeast area, the professionalism with which they operate their business, and requested that Council approve the request for rezoning.

There being no further speakers, the Mayor declared the public hearing closed.

Discussion ensued as to how much property is currently available in the vicinity of Mr. Pratt's business that is appropriately zoned for the use under discussion; whereupon, Mr. Townsend noted that within one quarter mile of the location in question, 25 vacant lots are currently zoned C-2, General Commercial District, and 43 vacant lots are zoned LM, Light Manufacturing District. It was explained that using the City's GIS data, vacant lots are described as lots that contain no structure, parking lots, storage yards, or vacant of any use, which is the all encompassing category that addresses properties that have no improvements that are zoned either C-2 or LM. He further advised that from a zoning point of view, there are significant properties of C-2 and LM zoned properties in relative proximity to the southeast neighborhood.

Following further discussion, Ms. Goodlatte clarified that the petitioner worked with at least three real estate brokers and spoke at length with the City Planning Commission regarding a concern that he had been unable to identify other properties in the southeast area that met his business criteria. She stated that it is recognized that the City is sensitive to ensuring that inventories of existing appropriately zoned properties are looked at before other properties are considered.

There was discussion in regard to the proffered conditions for rezoning; whereupon, Ms. Goodlatte advised that her client is willing to submit additional proffers that the building will be constructed substantially in accordance with certain stated elevations that will be submitted in the form of a written proffer to the City Attorney.

The City Attorney advised that the fifth proffer submitted by the petitioners reads as follows: "The building shall be constructed in substantial conformity with the elevations dated September 15, 2003, as amended on December 15, 2003, made by Norman Pratt, a copy of which is filed with the City Clerk", and it will be necessary to amend the ordinance accordingly.

Mr. Dowe moved that the ordinance be amended as follows: "The rezoning is subject to the proffers contained in the Petition filed in the Office of the City Clerk on September 30, 2003, as amended on December 15, 2003." The motion was seconded by Mr. Fitzpatrick and adopted.

Ordinance No. 36582-121503, as amended, was adopted by the following vote:

AYES: Council Members Fitzpatrick, Wyatt, Bestpitch, Cutler, Dowe, and Mayor Smith-----6.

NAYS: None -----0
(Vice-Mayor Harris was absent.)

CITY PROPERTY-YMCA-LEASES: Pursuant to action by the Council, the City Clerk having advertised a public hearing for Monday, December 15, 2003, at 7:00 p.m., or as soon thereafter as the matter may be heard, on the proposed lease of City-owned property located in the 400 and 500 blocks of Church Avenue, S. W., when such property is acquired by the City, pursuant to an Agreement dated December 24, 2002, between the City and the YMCA of Roanoke Valley, Inc., to the YMCA of Roanoke Valley, Inc., for a term commencing August 1, 2004, and ending December 1, 2005, subject to automatic renewal on a month-to-month basis, the matter was before the body.

Legal advertisement of the public hearing was published in *The Roanoke Times* on Friday, December 5, 2003.

The City Manager submitted a communication advising that on December 24, 2002, Council entered into an Agreement with the YMCA of Roanoke Valley to provide support for development and construction of a new YMCA facility in the West Church Avenue area of downtown Roanoke, in order to accommodate an expanding number of YMCA programs and to replace the current YMCA building located at the corner of Church Avenue and Fifth Street, S. W; in an effort to support the economic development of the West Church Avenue corridor, including the new YMCA facility, Council approved construction of a structured parking garage as part of the 2004-2008 Capital Improvement Plan; and bonds are projected to be sold in fiscal year 2006 for the project.

It was further advised that in order to assure sufficient interim parking for the new YMCA facility prior to the opening of a new public parking structure, the YMCA wishes to lease two City owned surface parking lots in the West Church Avenue corridor, for the purpose of providing parking for its members and program attendees; the lease would commence on August 1, 2004, and terminate on December 31, 2005, subject to automatic renewal on a month-to-month basis until the parking structure is operational; annual revenue from the lease will be \$35,597.00; and the YMCA will assume complete responsibility, liability and expenses related to operation of the parking lots for the term of the lease.

The City Manager recommended that she be authorized to execute the appropriate documents, to be approved as to form by the City Attorney, to lease the above described City-owned property to the YMCA of Roanoke Valley, Inc., for the term commencing August 1, 2004 until December 31, 2005, subject to automatic renewal on a month to month basis, until the new public parking structure located in the West Church Avenue corridor is operational.

Mr. Cutler offered the following ordinance:

(#36583-121503) AN ORDINANCE authorizing the City Manager to enter into a lease with YMCA of Roanoke Valley, Inc., for the lease of City-owned property identified as Official Tax Nos. 1113408, 1113409, 1113410, 1113411, 1113412, and 1113413, and Official Tax Nos. 1011206, 1011209 and 1011210, when they become property belonging to the City, upon certain terms and conditions; and dispensing with the second reading by title of this ordinance.

(For full text of ordinance, see Ordinance Book No. 68.)

Mr. Cutler moved the adoption of Ordinance No. 36583-121503. The motion was seconded by Mr. Dowe.

The Mayor inquired if there were persons present who would like to be heard in connection with the matter. There being none, he declared the public hearing closed.

There being no discussion or questions by Council Members, Ordinance No. 36853-121503 was adopted by the following vote:

AYES: Council Members Fitzpatrick, Wyatt, Bestpitch, Cutler, Dowe, and Mayor Smith -----6.

NAYS: None-----0.

(Vice-Mayor Harris was absent.)

(Council Member Bestpitch advised that his spouse is employed by the YMCA of Roanoke Valley, Inc., and inquired if he has a conflict of interest in voting on the proposed lease; whereupon, the City Attorney advised that Mr. Bestpitch would not have a conflict of interest.)

LEASES-CITY PROPERTY: Pursuant to instructions by the Council, the City Clerk having advertised a public hearing for Monday, December 15, 2003, at 7:00 p.m., or as soon thereafter as the matter may be heard, on a proposed extension of a lease agreement with The Hertz Corporation for an 87,120 square foot parcel of land located at 1302 Municipal Road, N. W., for a period of five years, the matter was before the body.

Legal advertisement of the public hearing was published in *The Roanoke Times* on Friday, December 5, 2003.

The City Manager submitted a communication advising that The Hertz Corporation currently leases approximately 87,120 square feet of City-owned property identified as Official Tax No. 6640123, commonly known as 1302 Municipal Road, N. W., for the purpose of operating an automobile rental establishment, The Hertz Corporation began leasing the parcel of land from the City of Roanoke in 1968, and the current lease agreement expired on November 30, 2003.

It was further advised that The Hertz Corporation has requested an extension of the current lease agreement for an additional five year period, beginning December 1, 2003 through November 30, 2008; the proposed agreement establishes a rate of \$26,600.00 for the first year, with an increase of two per cent each year thereafter; and annual rental, which will be paid in monthly installments, will be as follows:

December 1, 2003 – November 30, 2004	\$26,600.00	(\$2,166.67 per month)
December 1, 2004 – November 30, 2005	\$27,132.00	(\$2,261.00 per month)
December 1, 2005 – November 30, 2006	\$27,675.00	(\$2,306.25 per month)
December 1, 2006 – November 30, 2007	\$28,229.00	(\$2,352.42 per month)
December 1, 2007 – November 30, 2008	\$28,794.00	(\$2,399.50 per month)

The City Manager recommended, following the public hearing, that she be authorized to execute a lease extension agreement with The Hertz Corporation for approximately 87,120 square feet of City-owned property located at 1302 Municipal Road, N. W., for a period of five years, beginning December 1, 2003 and expiring November 30, 2008.

The City Manager orally corrected a typographical error in the monthly amount to be charged from December 1, 2003 until November 30, 2004, which should read \$2,216.67 per month in lieu of \$2,166.67.

Mr. Fitzpatrick offered the following ordinance:

(#36584-121503) AN ORDINANCE authorizing the proper City officials to enter into a lease extension agreement between the City and The Hertz Corporation for use of an 87,120 square foot parcel of City-owned land at 1302 Municipal Road, N. W., for the operation of an automobile rental establishment, upon certain terms and conditions, and dispensing with the second reading by title of this ordinance.

(For full text of ordinance, see Ordinance Book No. 68.)

Mr. Fitzpatrick moved the adoption of Ordinance No. 36584-121503. The motion was seconded by Mr. Dowe.

The Mayor inquired if there were persons present who would like to be heard in connection with the matter. There being none, he declared the public hearing closed.

There being no discussion or questions by Council Members, Ordinance No. 36584-121503 was adopted by the following vote:

AYES: Council Members Fitzpatrick, Wyatt, Bestpitch, Cutler, Dowe, and Mayor Smith -----6.

NAYS: None -----0.

(Vice-Mayor Harris was absent.)

EASEMENTS-SEWERS AND STORM DRAINS-CITY PROPERTY: Pursuant to Resolution No. 25523 adopted by the Council on Monday, April 6, 1981, the City Clerk having advertised a public hearing for Monday, December 15, 2003, at 7:00 p.m., or as soon thereafter as the matter may be heard, with regard to vacation of portions of sanitary sewer and drainage easements, in connection with development of a parcel of privately owned land located on Wildwood Road, S. W., Official Tax No. 1070605, the matter was before the body.

Legal advertisement of the public hearing was published in *The Roanoke Times* on Friday, December 5, 2003.

The City Manager submitted a communication advising that Robert H. Kulp, Jr., and G. Baker Ellett, owners of property located on Wildwood Road, S. W., Official Tax No. 1070605, have requested that the City vacate portions of those sanitary sewer and drainage easements that interfere with development of the parcel of land; and the owners propose to relocate the existing utilities and easements and are willing to dedicate to the City alternate easements for the new alignment.

It was further advised that Council previously authorized vacation and relocation of existing easements and acceptance and dedication of new easements on the property for developmental purposes in January 2003; an easement was recorded which vacated the old easement and dedicated the new easements to the City; and subsequent to Council's actions and recordation of the relevant documents, it was discovered by the owners of the property that the proposed structure to be developed on the property would encroach on a portion of the relocated easements.

It was explained that the plats have been reviewed by and are acceptable to the City Engineer; and the owner of an adjacent parcel of land (Lot 3A), June W. Camper, upon which a portion of the relocated easements will encroach, has agreed to dedicate the proposed easement on her parcel of land.

The City Manager recommended, following the public hearing, that she be authorized to execute the appropriate documents vacating portions of the existing easements and accepting the new easements, with the property owner to be responsible for preparation of all necessary documents, to be approved as to form by the City Attorney, and for all expenses associated with relocating the existing utility.

Mr. Fitzpatrick offered the following ordinance:

(#36585-121503) AN ORDINANCE authorizing the vacation and relocation of a portion of a sanitary sewer and drainage easement across Tax Map No. 1070605, located on Wildwood Road, S. W., and across a portion of the adjoining parcel identified as 1070603, authorizing the acceptance and dedication of a new sanitary sewer and drainage easement across a portion of the same properties, upon certain terms and conditions, and dispensing with the second reading by title of this ordinance.

(For full text of ordinance, see Ordinance Book No. 68.)

Mr. Fitzpatrick moved the adoption of Ordinance No. 36585-121503. The motion was seconded by Mr. Dowe.

The Mayor inquired if there were persons present who would like to be heard in connection with the matter. There being none, he declared the public hearing closed.

There being no discussion or questions by Council Members, Ordinance No. 36585-121503 was adopted by the following vote:

AYES: Council Members Fitzpatrick, Wyatt, Bestpitch, Cutler, Dowe, and Mayor Smith -----6.

NAYS: None -----0.

(Vice-Mayor Harris was absent.)

OTHER BUSINESS:

ARCHITECTURAL REVIEW BOARD: A petition for appeal of a decision of the Architectural Review Board in connection with denial of a Certificate of Appropriateness, filed by Lewis R. Burger, Owner, Burger & Son, Inc., with regard to replacement of windows, siding and installation to property located at 802 Marshall Avenue, S. W., was before Council.

Mr. Burger presented photographs depicting the condition of houses surrounding his property at 802 Marshall Avenue, S. W., and called attention to numerous improvements that have been completed, including front porch improvements and siding. He stated that no solutions to his dilemma were offered by the Architectural Review Board, and he believes that he has been discriminated against by City Building Inspectors. He advised that he is a disabled veteran who lives on a limited income, therefore, he is seeking grant funds to make the necessary repairs to his property.

As background, R. Brian Townsend, Director, Planning, Building and Development, advised that:

The structure at 802 Marshall Avenue, S. W., was built in 1923 and contains two dwelling units; and the property has a long history of code enforcement issues.

Upon investigation by staff, it was determined that the structure was condemned after Mr. Burger purchased the property in 1986.

In 1994, Code enforcement action was taken on the structure against Mr. Burger and the co-owner at that time, Margaret Wade, to repair the foundation, porch piers, siding, gutters, down spouts, porch decking, rails, columns, and electrical.

In 1994, a fire damaged the structure, but Ms. Wade was granted a Certificate of Appropriateness to replace the standing-seam metal on the roofs with asphalt shingles; however, in July 1995, a criminal complaint was issued to Ms. Wade for failing to repair the fire damage to the front porch; the work was subsequently completed, and the complaint was dismissed in September, 1995.

In 1999, Mr. Burger obtained sole ownership of the property; in 1999, the property was condemned and ordered to be vacated and secured; Code officials cited problems with exterior walls, roof, peeling paint, doors, soffits, gutters and down spouts, trash, lack of heat, insect infestation, and standing sewage in the basement.

Code officials met with Mr. Burger in March and April 2001, as he initiated repairs to the structure; on July 16, 2001, a Certificate of Compliance was granted from the Rental Inspection Program for the lower unit only; outstanding code compliance issues continued with the rest of the building and on July 16, 2002, the remainder of the work was completed.

In May, 2003, it was observed that vinyl siding was being applied to the front porch of the structure, which is within the H-2, Neighborhood Preservation District; City staff visited the property on May 14, 2003, and spoke with Mr. Burger while he was applying vinyl siding to the entablature of the front wood windows with vinyl replacement windows and requested that he stop work on the property and apply for a Certificate of Appropriateness for the work already completed; Mr. Burger refused to stop work and stated that he was "grandfathered in" because he owned the house prior to the historic district being established; he was advised that the work needed to comply with Historic District guidelines and if he refused to obtain a Certificate of Appropriateness, he would be in violation of the zoning ordinance and be summoned to General District Court; however, Mr. Burger continued to apply vinyl siding and a summons was issued for his appearance in General District Court.

Mr. Burger appeared in General District Court on September 4, 2003; the Court continued the matter so that he could submit an application for a Certificate of Appropriateness for review by the Architectural Review Board at its October meeting; on October 9, 2003, the Architectural Review Board considered the application; Mr. Burger stated that the vinyl had been installed three years ago; photographs show some of the wood siding still visible on the house; one of the photographs is from the City of Roanoke's GIS inventory and the other was taken by a resident in August, 2002; the photographs denote the historic wood siding and some trim details; the wood siding did not appear in poor condition; the

photograph also depicts decorative features that have since been covered by synthetic material with no attempt to emulate them. During the October, 2003, ARB meeting, Board members and staff were concerned that the vinyl siding had not been installed properly and that the windows were replaced with new vinyl windows that did not match the original windows, nor was the trim retained; virtually every element of the house had been covered with vinyl; and a Board member suggested three specific actions that the applicant could undertake that might make the vinyl siding more compatible.

The Chairman of the Architectural Review Board advised Mr. Burger that if the Board denied his application, he could work with staff and other Board members to submit another substantially different proposal; Mr. Burger requested that the Board proceed with its vote; the motion to approve the application failed by a 0 - 7 vote; and Mr. Burger was formally notified of the denial and of his right to appeal to the Council; whereupon, he filed his appeal on November 3, 2003.

On November 6, 2003, Mr. Burger appeared in General District Court as scheduled and advised that he was appealing the Board's decision, and the Court requested that he return on December 18, 2003, for further consideration of the case; immediately following the November 6 court appearance, Mr. Burger approached the Agent to the Architectural Review Board with regard to the possibility of working on a design solution for the ARB in lieu of his Council appeal, staff agreed to work with Mr. Burger, however, after several follow up telephone calls, Mr. Burger decided to proceed with his appeal to City Council.

A report of the Architectural Review Board advising that Section 36.1-345(a) of the Zoning Ordinance provides:

"In order to encourage the preservation and enhancement of the district and encourage the rehabilitation and new construction in conformance with the existing scale and character of the district, the architectural review board shall review and approve the erection of new buildings or structures, including signs, the demolition, moving, reconstruction, alteration or restoration, of existing structures and buildings, including the installation or

replacement of siding, or reduction in their floor area, including the enclosure or removal of a porch. No such erection, demolition, moving, reconstruction, alteration, restoration, or enlargement or reduction of a structure, or building, shall be undertaken without the issuance of a certificate of appropriateness by the board, unless otherwise specified herein”.

It was further advised that the Architectural Design Guidelines adopted by the ARB and endorsed by Council state that historic wood siding is a distinctive feature of many Roanoke residences and that changing or covering siding can often alter or destroy the authentic character of a building; and the guidelines further recommend that the following be considered when installing vinyl siding:

Do not replace sound historic siding with new materials to achieve an “improved” appearance.

Historic wood siding is a distinctive feature that helps to define the visual characteristics of a building.

Both new and historic siding requires periodic maintenance to give a building proper weather protection.

Retain existing siding: Identify and keep the original exterior siding materials as well as any unique siding.

The Architectural Review Board advised that two matters involving the application of vinyl siding have recently been appealed to Council; in November 1998, the Board denied a request to apply vinyl soffit material on a house at 601 Allison Avenue, the decision was appealed to Council, and Council over turned the Board's decision on January 19, 1999; and the latest appeal to Council was a series of events that occurred during the summer of 2003, when Dana Walker, H & W Properties, LLC, twice appealed the Board's decision to deny an application of vinyl siding to rental property at 702 Marshall Avenue, S. W.; the initial request was denied by the Board on May 8, 2003, because the vinyl siding did not maintain the architecturally defining features of the house; due to a lack of gutters and down spouts, the house also suffered from moisture damage, which the Board believed that the application of vinyl siding would have exacerbated; Mr. Walker appealed the Board's decision to Council on June 21, 2003, at which time Council requested that

Mr. Walker present a new application to the Board; the ARB unanimously denied the revised application at its July 10, 2003 meeting; Mr. Walker again appealed to Council and Council unanimously upheld the Board's decision on August 18, 2003; and the vinyl siding that was applied to the house was subsequently removed.

It was explained that since January 2001, the ARB has approved four applications for vinyl siding; numerous other projects have been approved administratively; and with these projects, the applicant provided sufficient detail and proposed to apply the materials in a manner that preserved the character and architecturally defining features of the house.

The Architectural Review Board recommended that Council affirm the Board's decision to deny the issuance of a Certificate of Appropriateness for property located at 802 Marshall Avenue, S. W. , for the installation of vinyl siding, on the grounds that installation of the vinyl siding does not maintain the architectural defining features of the building and is not appropriate.

If a Certificate of Appropriateness is not issued, question was raised as to what will happen to the work that has been completed to date; whereupon, Mr. Townsend advised that if Council were not to uphold the action of the Architectural Review Board, the work that has been done to date would be approved and a Certificate of Appropriateness would be issued; if the Council were to affirm the action of the ARB, Mr. Burger would be required to remove all material from the building that was erected without ARB approval. He advised that the matter could be referred back to the Architectural Review Board with instructions to clarify to Mr. Burger the necessary action that will be required to bring the house more in keeping with the architectural intent of the historic district.

Although it was agreed that Mr. Burger did not follow Architectural Review Board guidelines, concern was expressed by some Members of Council with regard to removing the improvements already made to the building; whereupon, Mr. Townsend advised that at the October, 2003 ARB meeting, Board members and staff were concerned that vinyl siding had not been installed properly, windows were replaced with new vinyl windows that did not match the original windows, trim had not been retained, and virtually every element of the house had been covered with vinyl. He added that a member of the ARB suggested three specific actions that the applicant could take that might make the vinyl siding more compatible; the Chairman also advised Mr. Burger that he, along with staff and other ARB Board members, could provide suggestions on what could be done to the building, retroactively, to restore some of the original intent; however, Mr. Burger did not place anything substantial on the table for consideration by the Board. He advised that following

the General District Court hearing in November, staff indicated to Mr. Burger the opportunity to continue to work on some resolution, retroactively, to the property, the agent to the ARB followed up with telephone calls, and Mr. Burger decided to continue on the appellate process, as opposed to going back to the ARB with changes to the facade that could potentially bring the property back to some semblance of character to the historic district. To address the concerns of some Members of Council, Mr. Townsend stated that with the cooperation of Mr. Burger, the Architectural Review Board could engage in further discussion with the petitioner on actions that could be taken to salvage some of the improvements already made to this point.

The Mayor inquired if the matter can be resolved without requiring Mr. Burger to start over; whereupon, Mr. Townsend advised that it is possible to resolve the issue as long as Mr. Burger is amenable to meaningful discussion insofar as specific proposals that will be reviewed and approved by the Architectural Review Board.

Robert N. Richert, Chair, Architectural Review Board, advised that in all of his years of involvement with the H-2, Historic District, including two years on the Architectural Review Board, he has never encountered a more intransigent property owner, and the amount of resources expended by City staff and the courts to get the property owner to submit an application is an outrage. He advised that in his opinion the ARB will be reluctant to make any decision that in any way validates the course of action that the property owner has taken over not only the last two years, but the last 20 years. He expressed concern with the messages that are being sent to the community; in the last six months two property owners have been expected to remove vinyl siding from their buildings and they have done so because the City took a position and abided by that decision; and if the Council chooses to affirm the Board's action, such does not preclude Mr. Burger from bringing back to the ARB, after appropriate consultation with staff, an acceptable proposal which will involve more investment. He advised that Mr. Burger is scheduled to appear in General District Court later this month, and, if Council elects to affirm the ARB's decision, it is requested that City staff be represented by additional legal counsel since this is a situation that requires dramatic change.

Mr. Bestpitch inquired if the Architectural Review Board continues to be willing to work with Mr. Burger; whereupon, the Agent to the ARB responded in the affirmative.

Based upon the evidence, testimony and documents that were presented to the Council, Mr. Bestpitch moved that the decision of the City of Roanoke Architectural Review Board on October 9, 2003, be affirmed, and that no Certificate of Appropriateness be issued for the installation of siding and windows at 802 Marshall Avenue, S. W., as set forth in the petition for appeal, on the grounds that the proposed installation would not maintain the architectural defining features of the building. The motion was seconded by Mr. Cutler.

The Mayor referred to an article in the Old Southwest Newsletter which was prepared by the Agent to the Architectural Review Board in regard to the elimination of vinyl siding in the historic district. The Mayor expressed concern with regard to the position of Architectural Review Board and City Planning Commission staff regarding the use of vinyl siding, and inquired if the article was written by a City employee on City time. He stated that there are legitimate cases where property owners are trying to do the right thing and installation of vinyl siding, is the only way they can afford to improve their property. He added that he is interested in protecting those citizens and intends to fight the battle for those persons who have been abused by the vinyl siding rule.

Mr. Fitzpatrick called for the question.

The motion offered by Mr. Bestpitch, second by Mr. Cutler, was adopted, Mayor Smith voted no.

Mr. Marwood Larson, 517 Washington Avenue, S. W., Editor, Old Southwest Newsletter, clarified that the column above referenced by the Mayor, in the Old Southwest Newsletter, as prepared by the Agent to the City Planning Commission, was funded through neighborhood dues and the column was written on the personal time of Ms. Beckett and not as an employee of the City of Roanoke.

HEARING OF CITIZENS UPON PUBLIC MATTERS: The Mayor advised that Council sets this time as a priority for citizens to be heard, and matters requiring referral to the City Manager will be referred immediately for any necessary and appropriate response, recommendation or report to Council.

ZONING-DRUGS/SUBSTANCE ABUSE: Mr. Ray Douglas spoke against the proposed methadone clinic on Hershberger Road, N. W. He advised that he was not opposed to the methadone clinic, but to the proposed location in view of the number of near by schools and churches.

Ms. Perneller Wilson, 3045 Willow Road, N. W., presented petitions signed by approximately 1200 persons in opposition to the proposed methadone clinic on Hershberger Road, N. W.

ARMORY/STADIUM: Mr. Michael Herman, 2819 Carolina Avenue, S. W., spoke in support of the renovation of Victory Stadium. He also spoke to the advantages of the Stadium's close proximity to the Rivers Edge Sports complex, and advised that Victory Stadium offers jogging facilities and a large seating capacity.

Mr. Matthew Herman, 2819 Carolina Avenue, S. W., spoke in support of rehabilitation of Victory Stadium in memory of and in tribute to the World War II generation. He stated that Victory Stadium is used for biking and jogging, and the facility is close to the Rivers Edge Sports Complex.

SCHOOLS: Ms. Helen E. Davis, 35 Patton Avenue, N. E., advised that the City of Roanoke continues to remain in a state of uneasiness, unhappiness, and uncertainty; and many parents, students, teachers and citizens, as well as Roanoke's communities, are concerned and troubled. She stated that citizens are

also troubled and concerned about discipline in Roanoke's schools, and the problem needs to be corrected in order to protect Roanoke's children.

CITY EMPLOYEES-TAXES: Mr. Robert E. Gravely, 729 Loudon Avenue, N. W., called attention to problems within the City work force; i.e.: interpretation by certain City officials in regard to the City's time frame for filing of grievances by City employees. He expressed concern with regard to the manner in which taxpayers' dollars are spent and an increase in property values leading to higher real estate taxes.

SCHOOLS: Mr. Chris Craft, 1501 East Gate Avenue, N. E., advised that he has applied for the vacancy on the Roanoke City School Board created by the resignation of Melinda J. Payne. He stated that he is a product of the Roanoke City Public School System, and, if appointed to the School Board, he will work to improve the relationship between Council and the School Board.

COUNCIL: With respect to the Closed Meeting previously concluded, Mr. Bestpitch moved that each Member of City Council certify to the best of his or her knowledge that: (1) only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act; and (2) only such public business matters as were identified in any motion by which any Closed Meeting was convened were heard, discussed or considered by City Council. The motion was seconded by Mr. Dowe and adopted by the following vote:

AYES: Council Members Fitzpatrick, Wyatt, Bestpitch, Cutler, Dowe, and Mayor Smith-----6.

NAYS: None-----0.

(Vice-Mayor Harris was absent.)

WATER DEPARTMENT: Mr. Fitzpatrick moved that Council ratify the appointment of George W. Logan as the seventh member of the Board of Directors, Western Virginia Water Authority. The motion was seconded by Ms. Wyatt and adopted by the following vote:

AYES: Council Members Fitzpatrick, Wyatt, Bestpitch, Cutler, Dowe, and Mayor Smith-----6.

NAYS: None-----0.

(Vice-Mayor Harris was absent.)

The Mayor declared the meeting in recess until Tuesday, December 30, 2003, at 9:30 a.m., at the Roanoke County Administration Center, Fourth Floor Conference Room, 5204 Bernard Drive, S. W., for a joint meeting of Roanoke City Council and the Roanoke County Board of Supervisors, to continue discussions with regard to the Western Virginia Water Authority.

(The joint meeting of Council and the Board of Supervisors was later postponed until Tuesday, February 10, 2004, at 12:00 noon at the Roanoke County Administration Center, Fourth Floor Conference Room, 5204 Bernard Drive, S. W., Roanoke, Virginia.)

APPROVED

ATTEST:

Mary F. Parker
City Clerk

Ralph K. Smith
Mayor
